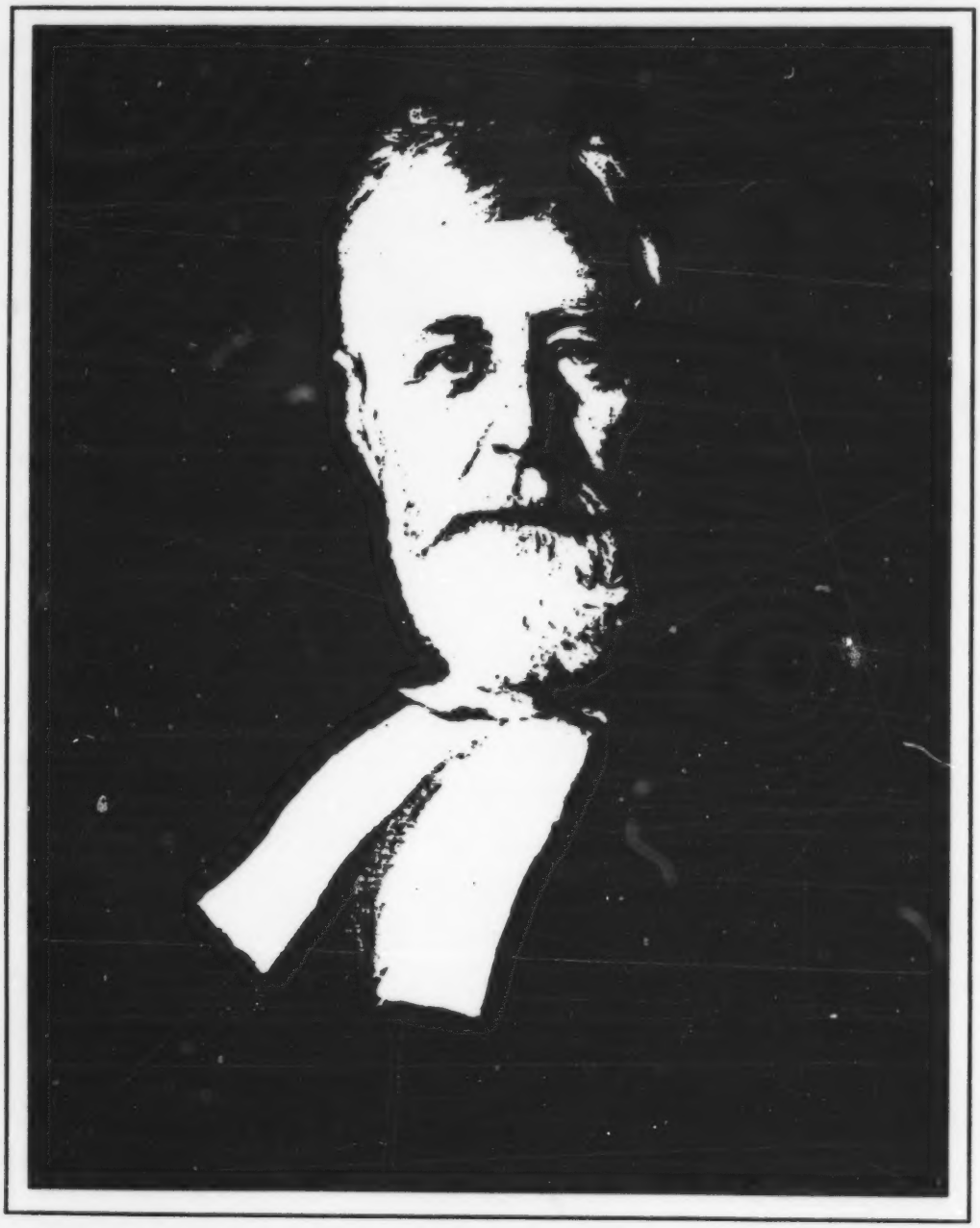
THE WORKERS' COMPENSATION BOARD OF ONTARIO 75TH ANNIVERSARY SYMPOSIUM

September 20-21, 1989



THE FOUNDER OF WORKERS' COMPENSATION IN ONTARIO
SIR WILLIAM MEREDITH

Workers' Compensation Board
Commission des accidents du travail

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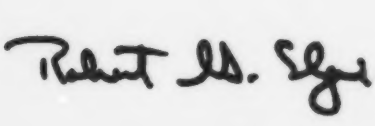
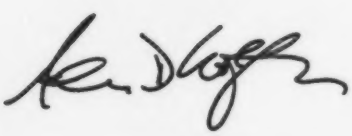
Acknowledgments

The celebration of the 75th anniversary of the passing of the first Workers' Compensation Act *in Canada is an important event. Yet we must never forget the dedication and hard work of the many people who have, over the years, contributed to the workers' compensation system in Ontario; through their combined efforts the system has responded to the changing needs of its clients — the workers and employers of Ontario.*

We would like to take this opportunity to thank all of those who helped bring us to where we are today: first and foremost Sir William Ralph Meredith, the founder of workers' compensation legislation in Ontario, whose goal for the injured workers of Ontario was "Justice Humanely Administered"; to all the Ontario Government legislators who not only enacted the initial legislation but who have, as well, brought in legislative amendments from time to time either to fine tune or to reform some aspect of the statute; to members of the worker, employer, and health care communities who have offered valuable advice and opinions; to all the commissioners and members of the Board of Directors who have worked tirelessly in the interests of Ontario workers and employers; and finally, the Workers' Compensation Board employees who have served the injured workers and employers of Ontario with such loyalty and commitment.

In addition, we would both like to say a special thanks to the people who made the Board's 75th Anniversary Symposium such a success: the speakers and panelists who shared with us their expertise and insight; the Board Secretary and her capable staff; the Communications Branch; Graphics; and Printing staff, whose combined efforts in planning, co-ordinating, managing and producing materials for the Symposium ensured a well-run, professional event.





ROBERT G. ELGIE, M.D
Chairman

ALAN WOLPSON,
Vice-Chairman of Administration
and President

THE WORKERS' COMPENSATION BOARD OF ONTARIO
75TH ANNIVERSARY SYMPOSIUM
September 20-21, 1989

Nineteen eighty-nine is the 75th anniversary of the passage of Ontario's *Workers' Compensation Act.* To mark this historic occasion and the progress achieved over the years, the Workers' Compensation Board (WCB) hosted, in September, a Symposium on current issues facing workers' compensation in Ontario. The program brought together leading authorities to discuss timely and vital subjects such as legislative changes to workers' compensation, new approaches to medical and vocational rehabilitation, and organizational change in large public agencies.

The text of presenters', guest speakers', panelists' and chairman's remarks have been reproduced for you in this commemorative book, to mark the 75 years of workers' compensation in Ontario.

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OPENING REMARKS

by The Honourable Robert Stanbury, Symposium Chairman

Wednesday, September 20, 1989
Metro Convention Centre
Toronto, Ontario

I'm Bob Stanbury, your chairman for the next day and a half. I'd like to welcome you to this historic Symposium commemorating the 75th anniversary of workers' compensation in Ontario and in Canada.

As all of you well know, during the past 74 years the Workers' Compensation Board of Ontario has been shaped by a number of significant pieces of legislation starting with the report of Sir William Ralph Meredith in 1914.

The report formed the basis for the *Workers' Compensation Act*. Our first session in this Symposium is on legislation, legislative reform. The basic principles and structure established by Sir William have remained unchanged since the inception of the Workers' Compensation Board, but some important additions have been made. In 1917, the *Act* was amended to authorize the Board to pay for medical services. In 1924, vocational rehabilitation was added to the *Act*. In 1952, the first experience rating plan was introduced. In 1984, the passage of Bill 101 brought major changes to benefits for injured workers, the administrative structure of the WCB and established the Workers' Compensation Appeals Tribunal. Finally, in 1989, with the passage of Bill 162, a new dual award system has been introduced tying compensation more closely to the worker's future loss of earnings and providing an additional award for loss of enjoyment of life. As well it places a major emphasis on measures to facilitate the successful reintegration of the injured worker into the workforce.

Now the speakers in this morning's first session on legislative reform will be Dr. Robert Elgie Chairman of the WCB and Professor Paul Weiler, that other professor. The panelists who will comment will be Ron Ellis and Professor Terry Ison.

I'd like first of all to introduce, if that is necessary, Dr. Robert Elgie, the first speaker.

Dr. Elgie is a graduate of the University of Toronto Schools, more importantly, of the University of Western Ontario and Osgoode Hall Law School, Toronto. He went from Osgoode Hall Law School to the University of Ottawa where he studied medicine and graduated cum lauda with a medical degree in 1959. He is a fellow of the Royal College of Surgeons in Neuro Surgery as well as a Queen's Counsel.

An unusual combination, perhaps, but one which serves him well as chairman of the WCB. He has held various teaching positions with faculties of medicine at Queen's University and Toronto and was on staff at Scarborough General Hospital, becoming Chief of Medical Staff, before he turned back to his first love of politics and was elected to the Ontario Legislature in 1977 as the member for York East.

During his political career he served as Ontario Minister of Labour, Minister of Consumer and Commercial Relations, and Minister of Community and Social Services.

After his retirement and resignation of his seat in the Legislature on September 23, 1985 he was appointed Chairman of the Workers' Compensation Board.

I take pleasure in introducing to you the Chairman, Dr. Robert Elgie.

LEGISLATIVE REFORM

HISTORY OF LEGISLATIVE REFORM OF WORKERS' COMPENSATION IN ONTARIO

Notes for remarks by Dr. Robert G. Elgie,
Chairman, Workers' Compensation Board

Wednesday, September 20, 1989
Metro Convention Centre
Toronto, Ontario

Thank you very much.

We are gathered here today to recognize the 75th anniversary of a major event in the evolution of social policy in this province, the passage of the first *Workers' Compensation Act* of its kind in Canada, in 1914. We are here, as well, to honour Chief Justice William Ralph Meredith who recommended and drafted this far-reaching proposal.

To chart the odyssey of workers' compensation over the years is instructive. It is a voyage that has been controversial and dynamic — certainly never static.

John Kennedy once said of his experience in government that, "When things are non-controversial and beautifully co-ordinated there really isn't very much going on". I venture to say that workers' compensation has never enjoyed such a period of tranquillity. I'm sure there are at least a few individuals in this room today who can bear testimony to what Professor Weiler once called the "charged atmosphere" surrounding the reform of workers' compensation.

But perhaps it is an atmosphere that's not only justified, but one that is also healthy for the system. The stimulus to legislate and to revise existing legislative remedies that are no longer satisfactory is important and necessary if we are to respond effectively and appropriately to valid social problems.

Thus the reform process in an area such as workers' compensation constantly challenges the very parameters of the system and asks us to redefine our concepts of justice and fairness in light of the complexities and prevailing conditions of contemporary society.

Today is a most appropriate time to talk for a few moments about the history of workers' compensation reform in Ontario — to remind ourselves of the origins of the present system and to examine changes that have occurred over the years.

In tracing the origins of workers' compensation in Western law, one might speculate about the significance of statements in ancient laws which might be said to represent an equivalent of the modern principle.

Let me just refer to Exodus twenty-one, verse nineteen, as an example of a biblical reference where it is required that a person who causes injury to another shall pay for the loss of his time and shall cause him to be thoroughly healed.

In the laws of Henry the First, dating from about the year eleven hundred, there are statements about compensation for the death of another. And, Brunner describes the rule of early Germanic law as follows, "The master was liable for the wergeld of the workman if the latter lost his life in the service, and for the appropriate money payment if he was injured...."

Workers' compensation, as a concept in modern times, had its origins in Germany, Great Britain and in the United States in the late 1800s and early 1900s.

Workers' compensation in Germany was not an outgrowth of the common law or of employer's liability legislation. It is and was the expression of an entirely new social principle and it is traceable to the early German guilds, which provided disability, sickness, and death benefits, with both contributions and administration shared equally by employer and employee.

In imperial Germany in the 1880s, the Lasalle Socialist movement was gaining popularity, Chancellor Otto von Bismarck proposed a number of pieces of social legislation to the German Reichstag, which were passed between 1884 and 1886. Among them was a compulsory state-run accident compensation system financed by both employers and workers.

In Great Britain, on the other hand, the origins were quite different. Individual rights and responsibilities were generally dealt with under common law principles and, as Mr. Justice Riddell of the Supreme Court of Ontario was wont to say, "The com-

mon law usually makes sense of things until parliament intervenes". Unfortunately, common law principles were unable to cope with the problems that arose in an industrial society with its increasing risks and hazards and its increasingly impersonal workplace relationships.

Early legal jurisprudence in the 1800s made it almost impossible for workers to succeed in law suits against their employers for negligence. A series of decisions established very potent defences for employers — defences which became known as the 'unholy trinity' — voluntary acceptance of risk; the fellow worker rule; and the contributory negligence rule. Any or all of these defences created a virtual bar against any successful action.

In addition, there were, of course, grave practical difficulties for any worker pursuing litigation — securing and paying for legal counsel — not only for the initial action but also for subsequent appeals. There was also the reality that a worker might find it very difficult to resist any offer of settlement while the lawsuit took its leisurely course.

The first attempts to deal with these obstacles were undertaken in 1880 with *The Employers Liability Act* in Great Britain and in 1886 with the misnamed *Workmen's Compensation for Injuries Act* of Ontario. Both of these laws attempted to ameliorate the worst aspects of the unholy trinity for workers suing their employers. Nevertheless, they were still essentially employer liability acts, still depending ultimately on fault, with claims for compensation still being made in the courts. They were not really the forerunners of what we have come to know as true workers' compensation legislation.

The first *Workmen's Compensation Act* in Great Britain was passed in 1897 and it formed part of the basis of the Meredith review. It placed the full responsibility on an individual employer to compensate his or her own workers for their work-related injuries. This law was very limited in its application; it only applied to dangerous employment and there was no liability on the employer if the worker was solely to blame. Benefits were very low, there was no requirement that the employer insure this risk — but the law did prohibit employers from contracting out of its provisions. The common law, with some assistance from the 1880 *Employer's Liability Act*, continued as an alternative, permitting a worker to sue for damages rather than accept compensation under the 1897 *Act*.

Meanwhile, in the United States, strong support for no-fault workers' compensation was growing and several state legislatures enacted workers' compensation legislation between 1908 and 1915. Some of these statutes, notably the State of Washington's *Compensation Act*, set up exclusive state-managed compulsory systems based on collective liability. I single out the state of Washington because its statute was to play a very important role and to have great influence on the ultimate views of Chief Justice Meredith.

It was against this background of change — and because of pressure that was building from both industry and labour — that the then-Premier of Ontario, James Pliny Whitney, decided it was time to have the matter examined.

In 1910, Whitney appointed his mentor and former colleague, Mr. Justice William Ralph Meredith, later Chief Justice of Ontario, to head a Royal Commission that was to study workers' compensation schemes and to make recommendations to the government of the day.

The scheme proposed by Meredith has been described as embodying an "historic trade off". Workers gave up the right to sue their employers — a right that was contingent upon their ability to prove negligence on the part of the employer — and, in return, they were guaranteed protection against income loss due to industrial injuries and disease, irrespective of fault.

It was to be a publicly-administered, compulsory system and, with the exception of a few large enterprises, (notably various levels of government), it was to be a collective liability system. Payment to workers was secured by the creation of an accident fund and there was to be continuity of payment while disability remained. Provisions to promote health and safety in the workplace would be included as well.

It is important to note Meredith's view that the "amount of compensation should have relationship to the earning power of the injured workman" — in other words, it was to be a wage loss compensation system.

Meredith generally supported the position that labour took on most issues. In particular, he supported their view that the system should be financed exclusively by employers and, interestingly enough, he resisted the position of the Canadian Manufacturers Association that it should be a current account or pay-as-you-go plan. Instead, he recommended that the Board was to set assessment rates so as not to "unduly or unfairly burden employers" of future generations.

The final report was submitted in 1913 and in the spring of 1914, the *Workmen's Compensation Act* was introduced into the Ontario Legislature, received Royal Assent on May 1st and came into force on January 1st of 1915.

It is somewhat of an anachronism to note that much of the debate with respect to workers' compensation reform during the late 1970s and early 1980s has revolved not so much around supplanting Meredith's original principles, as returning to them and translating them into modern day conditions and concepts.

Between 1915 and the late 1960s, across most jurisdictions in North America, change was gradual and consisted mainly of updating and fine-tuning legislation. In Ontario, benefit levels were raised from the initial 55 per cent of gross earnings to 66 2/3s per cent and eventually to 75 per cent of gross earnings. Coverage for medical costs, the addition of merit rating and the introduction of vocational rehabilitation followed very rapidly.

Nineteen sixty-three saw the addition of the term "disablement" added to the definition of accident in order to assure the compensability of accidents in which there were no "chance events" or specific incidents at work. This was to make it quite clear that acute injuries that developed over time, were to be compensated if they were work related.

The one major shift in direction that occurred was in the area of permanent partial disability benefits. The Ontario Board quickly came to believe that a compensation system that did not permit any recognition of the clinical impairment an individual might have, regardless of his or her earnings capability, produced some unsatisfactory results — results which I would say were inherent in a system that did not recognize any payment for the non-economic impact of an injury.

The Ontario Board was not alone in deciding to move away from an earnings loss system to a system that relied on a clinical rating schedule (the so-called meat chart), which presumed wage loss from the nature and degree of the injury regardless of the real impact of the impairment on one's earning capacity.

Similar movement to the clinical rating schedule approach had either already occurred or was taking place throughout the United States and in some European countries. It is interesting to note in Desmond Morton's book, *"Winning the Second Battle"*, that the Canadian Pension and Claims Board, established in 1915 to deal with injured war veterans, was moving in the same direction.

Dr. J. L. Todd was a member of that Board and it was his decision to adopt an amended version of what was called the "Table of Incapacities" — a clinical rating schedule that had its origins in the pension law of France in 1831.

The origins or these clinical rating schedules have remained elusive and shrouded in mystery, but it may be that Morton has come upon the truth and that they had their "beginnings" in that 1831 legislation in France.

Professor Arthur Larson, a leading contemporary American compensation scholar, in his address to the Association of Workers' Compensation Boards of Canada in 1987, postulates that the move to the rough, average justice approach of a clinical rating schedule in the United States was driven by administrative convenience and a determination to "prevent litigation".

It is also his expressed view that, "The early Ontario experience confirms my thesis that the reason for resorting to the schedule was avoidance of administrative difficulty. After only about a year of experience with the statute based on the Meredith draft, the (Ontario) Board prepared a report announcing it was administratively impossible to keep up with permanent partial cases, and proposing a procedure, similar to that in Washington, for evaluating such cases on the basis of relative impairment".

Initial opposition by some large self-insured employers to the use of a schedule was finally put to rest with amendments in 1942. The Ontario system of workmen's compensation went on to become one that was based on the clinical rating schedule for permanent partial disability pensions and the introduction of temporary, short-term rehabilitation supplements for those who had been undercompensated under the rough justice provided by the clinical rating schedule approach.

By the late 1960s and early 1970s, the compensation system was perceived by injured workers to contain a number of fundamental flaws. Those workers joined together in 1974 to form a number of injured worker groups in an effort to bring pressure on the government and the WCB — in particular to bring pressure for reform with respect to permanent partial disability awards.

With the creation of an Ontario "Ombudsman" in 1976, compensation issues gained additional attention. Meanwhile, employer groups were becoming vocal about rising costs and a 1978 actuarial report, prepared by the Wyatt Company, raised questions about the financial soundness of the workers' compensation system. That report also recommended that a much more broadly-based study was needed to resolve what were perceived to be controversial items in the workers' compensation system.

The Board itself, in 1979, developed a discussion paper which examined emerging trends in compensation benefits. The paper proposed, among other things, compensation at 90 per cent of net income and recommended a return to the Meredith

wage loss proposal as a model for permanent partial disability compensation.

This latter recommendation was the source of the most controversy — it was an issue not just in Ontario, but in many jurisdictions throughout North America and Europe.

It was in this environment of conflict, dissatisfaction and political disenchantment with an institution that was becoming a "cause célèbre", that the Minister of Labour of the day appointed Professor Paul Weiler, a distinguished Canadian scholar and professor of labour law at the Harvard Law School, to conduct an inquiry.

There was considerable pressure to conduct a full-fledged Royal Commission, but the ultimate decision was that Professor Weiler should conduct a one person, informal yet thorough inquiry and report back by the fall of 1980 with a package of proposals for statutory reform.

His first report, called "Reshaping Workers' Compensation for Ontario", was tabled on November 18, 1980. His second report, "Protecting the Worker from Disability: Challenges for the Eighties", was released in 1983, and the last report, "Permanent Partial Disability: Alternative Models for Compensation", was submitted to the Minister of Labour in December of 1986.

These reports have been the cornerstone of the reform effort in this province during the 1980s and they have been termed by Professor Arthur Larson as "the finest set of background studies I have ever seen".

In his first report, the philosophical underpinnings of workers' compensation were thoughtfully reviewed. In a very well-reasoned text, he outlined the issues and made a number of proposals aimed at overhauling the benefit system and the administrative structure of workers' compensation.

Weiler's key recommendation was in the area of benefit reform — a proposal that permanent partial disability benefits should consist of what he called a dual award. This award would consist of a pension payable during one's working life based on the actual loss of earnings and another lump sum cash benefit, which would provide compensation for the non-economic impacts of the injury — the loss of enjoyment of life that was associated with the disability. He supported this proposal by pointing out that injured workers and the public would no longer tolerate the inequities in individual cases which flowed from the rough justice provided by a clinically-based system of compensating for permanent partial disability.

Larson has supported that position and has expressed the view that the most single damaging trend in modern compensation has been the imperceptible shift away from the protection against actual wage loss.

Weiler, in essence, felt that the system was trying to do two things with one instrument. The initial intention of Meredith and of the *Act* was to compensate for the loss of income. Over time, the shift to the clinically-based system occurred and was an attempt to provide some redress for the serious impact of the permanent disability on an injured worker's life in general. The result, in his view, was that the permanent partial disability award performed neither of these tasks well.

There was, initially, some degree of consensus with respect to this proposal, but with the passage of time both injured workers and employers began to adopt more critical positions and it was not included in a legislative package that was placed before the Legislature in 1984.

There were a number of other proposals that were not included in that reform package — such as the recommendation for increased obligations with respect to vocational rehabilitation and an important recommendation that an injured worker should have a right to return to his or her former job or to a comparable job that he or she was able to perform; failing that, the worker should have a limited right to another suitable job in the same enterprise. Also, the proposal that a worker's employment benefits should be maintained by the employer for a period of time was not included — nor was mandatory experience rating.

Despite this, the 1984 legislative reform Bill certainly was the most extensive revision of workers' compensation law since the initial passage of the *Act* and it left intact the fundamental principles of the system.

Important proposals to reform the administrative structure of the system, areas that were perhaps less rigorously explored and developed by Meredith, were the main focus of the Bill.

The previous Workers' Compensation Corporate Board was to be eliminated and replaced by a part-time external Board of Directors made up of representatives of workers, employers, the public and the professions.

Because of justified criticism that an internal appeals system could not be perceived as impartial, and was seen by many as being incompatible with natural justice, there would be an independent external, tripartite appeals tribunal. An independent industrial disease body would be established to explore and make recommendations to the Board in the area of industrial disease. And, finally, independent Offices of the Worker Advisor and the Employer Advisor would be established in order to facil-

itate well-informed and effective presentation of issues.

Instead of accepting his proposal for separate external medical panels to deal with medical disputes, the legislation propored a panel of medical assessors who would be responsible for providing independent medical advice to the Appeals Tribunal in cases of medical dispute.

In the area of benefit changes, compensation was changed from 75 per cent of gross earnings to 90 per cent of net earnings and the ceiling for covered earnings was raised considerably, although not as much as Professor Weiler had proposed. Significant improvements in benefits for those whose spouses or supporting parents had been killed on the job were included and an employer was required to pay the worker's wages for the day of the accident.

In addition, the name of the Board was changed from the Workmen's to the Workers' Compensation Board; coverage was extended to domestic workers; and the human rights act was amended to prohibit discrimination against workers who sought or received compensation.

Indexing benefits to reflect inflation, although not part of that Bill, was added by amendment in 1986. A further addition to benefits, which had not been part of the proposal, included the provision of a supplement to older workers who were not able to return and who would not benefit from vocational rehabilitation.

That legislative package, known as Bill 101, was passed in 1984 and became effective in stages during 1985.

Professor Weiler was asked to continue his review of the permanent partial disability reform issue and, in 1986, submitted his third report to the government of the day.

By that time, of course, the dual award approach for compensation of permanent partial disability had been adopted in many jurisdictions in Canada.

In this third report, he once again argued the case for a dual award approach, but moved from an actual wage loss system to a projected earnings loss proposal with only infrequent reviews of the accuracy of the original projection.

It was his view that a single estimate of future earnings capacity impairment, no matter how well researched, would, nevertheless, still be in the realm of guesswork and probably little better than the current system based on scheduled awards with its notion of the average man receiving average justice.

As well, he revised his proposal with respect to a non-economic award and recommended, instead, that if the amount awarded was greater than $10,000, the worker should have the right to have it paid as a periodic monthly lifetime pension.

Flowing from this background and this most recent report, the government introduced legislative amendments in June of 1988. The Bill was passed in July of 1989 and received Royal Assent on July 26th.

Transitional provisions for existing claimants came into effect immediately. The balance of the *Act* is to be proclaimed early in 1990.

The new legislation will compensate workers with permanent partial disabilities for both their future loss of earnings and for the future loss of enjoyment of the non-work related aspects of life.

Compensation for future loss of earnings will be based on 90 per cent of the difference between pre-injury earnings and post-injury earnings capacity and will be payable until age 65, at which time contributions which have been made by the Board over the years to a retirement benefit will supplement whatever other retirement benefits the worker may have accumulated during his or her working lifetime.

The level of those permanent partial disability benefits will usually be set a year after the injury and will then be reviewed twice; the first review is to take place two years after the original assessment, and a second review will take place three years later to establish the final earnings loss award that will be payable. Workers will be entitled to apply for a review of that award if their clinical permanent impairment deteriorates significantly and in a way that was not anticipated.

The non-economic loss award will be based on the level of clinical impairment and will have regard to the age of the worker. The maximum payable is to be $65,000, and, as previously mentioned, if the award is over $10,000, the worker may choose either a lump sum or a lifetime pension.

The ceiling for covered earnings will rise over three years from 140 per cent of the Average Industrial Wage to 175 per cent of that wage.

The *Act* spells out in detail the worker's rights and the Board's obligations with respect to vocational rehabilitation services and places a mandatory duty on the Board to contact disabled workers within specific time frames in order to facilitate earlier intervention.

Two principles in the Bill, as I see it, are particularly important public policy pronouncements about a worker's attachment to the place of work. The legislation spells out the time-limited right of a worker to return to his or her former employment and requires employers to maintain benefits for a period of a year

after the injury. Certain exemptions from these rights, particularly with respect to construction workers, continue to cause some resentment. Proposals for regulations with respect to full-time construction workers will be developed after a period of consultation.

While this process of legislative reform has been underway, the Worker's Compensation Board itself has been involved in major and significant administrative changes — in addition to those that were imposed by the 1984 reforms. A complete restructuring and reorganization to achieve a greater degree of decentralization and to bring about an integration of services has occurred and will be discussed in detail later in this Symposium by my colleague, Alan Wolfson.

In addition, major steps towards an earlier-intervention policy with respect to vocational rehabilitation have already been undertaken in three pilot projects and should enable the Board to respond to its obligations regarding vocational rehabilitation as imposed by the legislation.

Extensive changes in the area of medical rehabilitation have also taken place and both of these matters will be discussed in greater detail later today by Dr. Elizabeth Kaegi.

The long and heated debate over Bill 162 has proved once again that the issues surrounding the compensation of the victims of workplace accident and disease are sensitive issues. Nevertheless, I believe substantial progress has been made in Ontario in the last five years. The legislative and administrative reforms have been pervasive and have altered in a most fundamental way the manner in which the Board operates and will operate.

We will continue to direct our efforts at providing a system that is humane, fair and open to new ideas. Above all, we will continue in our efforts to fulfil the goal envisioned by the founder of workers' compensation in Ontario, Chief Justice William Meredith — and I quote, "justice and humanity". To this, others have added — "speedily delivered".

In conclusion, let me just say that the tension that surrounds workers' compensation is by no means over. There are many, including Professors Weiler and Ison, who question whether we will indeed see th demise of workers' compensation as a separate entity in exchange for a more comprehensive disability scheme. Professor Weiler is with us today and will undoubtedly elaborate on the need for further reform in the broad area of personal injury.

Thank you very much.

THE NO-FAULT MODEL OF WORKERS' COMPENSATION: ITS FUTURE PROSPECTS

Notes for remarks by Paul Weiler,
Professor of Law, Harvard Law School

Wednesday, September 20, 1989
Metro Convention Centre
Toronto, Ontario

It is a great honour to be invited back to Toronto to speak at this gathering, commemorating the 75th anniversary of the appearance of workers' compensation in Ontario. It is only appropriate that such a symposium take place, celebrating one of the important events in the evolution of Canadian social policy in this century. And I take special pleasure in having had the chance for the last decade to help refashion our workers' compensation system to make it a more effective policy instrument for the next century.

I hope you will forgive me just a few minutes' personal reminiscence, because this will be pertinent to the substantive observations I will be making this morning. Though I am sure few people recollect that fact, I started out my law professor career in Toronto as a torts teacher and scholar. It was only the coincidental fact that I was on sabbatical in Vancouver when the Barrett government came to power in the early 70s that diverted me into labour law as Chairman of the British Columbia Labour Relations Board. I know that Bob Elgie did not know anything about my earlier interests and work in torts when he asked me, nearly ten years ago today, to be his special counsel in the review of workers' compensation in Ontario — a task that he assured me would take no more than six months out of my life.

Actually, it should not have made that much difference had Bob known of my torts work. Like just about everyone else in Canada (and in the United States) who taught and wrote about tort law at that time — Terry Ison, I might say, being a conspicuous exception to that rule — I knew little about workers' compensation; and thus my Osgoode Hall students and future tort practitioners learned almost nothing about it either. Workplace injuries tended to be treated as an entirely separate field, with its own rather exotic and somewhat antiquated version of administrative no-fault. What was then considered truly interesting, truly worthy of legal attention, were the common law principles governing motor vehicle, medical, consumer product and other such injuries that were handled through tort litigation in the ordinary courts.

In one respect the situation is markedly different today. There is a lot of interest in the no-fault idea right now. For example, I am now heading up two major studies in this area (to a considerable extent because I did take up Bob Elgie's invitation to return to the field of personal injury law). One is a multi-disciplinary, empirical study which a group of us at Harvard are doing for Governor Mario Cuomo of New York, investigating the way that medical injuries and medical malpractice occur in hospitals and how these cases are then treated by the legal system. Our objective, among other things, is to provide the data necessary to judge the feasibility and the desirability of a no-fault compensation program for these medical injuries. My other project is an American Law Institute study of the broader field of personal injury policy and tort reform, which is also taking a serious look at the pros and cons of no-fault administrative compensation schemes for product, environmental and medical injuries.

And this winter and spring when I spent a wonderful six months back in Toronto, it was also apparent how many people north of the U.S. border are talking about the no-fault alternative. Much of the interest has arisen within the political minefield of motor vehicle accidents and insurance. But I also understand that the Federal-Provincial Task Force which has been reviewing the medical malpractice problem in Canada is going to recommend in its forthcoming report a program of no-fault patient compensation to supplement the existing tort system (as now exists in Sweden).

Notwithstanding that broader interest in and attention to the no-fault idea, at least in the popular and political area these sentiments are fuelled almost entirely by what we know and dislike about tort litigation, not by any real appreciation of the realities of

no-fault in workers' compensation. For example, in my own conversations in Toronto a few months ago about the viability of a no-fault option for motor vehicle injuries, I was regularly struck by how many people appear to assume that this policy step would involve only a rather simple shift from the fault to the no-fault principle as the basis of liability and compensation. As we practitioners and constituents of workers' compensation realize, though, the no-fault model entails a number of complex and contentious program features. Let me mention some of the key ones.

(i) Substituting an inquiry about the cause of the injury rather than about the fault of the injurer often poses grave difficulties in its own right, as was amply demonstrated by the debate in Ontario WC about long latency, non-signature occupational diseases.

(ii) Even if entitlement is quite clear on causal grounds, the structure and scope of the benefits payable is an equally touchy problem; something Bob Elgie and I will testify to personally after having wrestled for ten years with the subject of permanent partial disability.

(iii) While one might remove decision-making about these issues of entitlement and benefits from the courts because of concern about legal deals and costs, still one needs to have an administrative process which is both reliable and fair in its decision-making: ultimately that will require law and lawyers, as exemplified by the experience of Ron Ellis at WCAT.

(iv) Finally, in specifying the sources of funding and insurance for such a system one faces a real tension between the values of collective or of individual employer responsibility, as revealed by the debate this decade about introducing experience rating into Ontario workers' compensation.

Thus, to return to the point I made earlier, while there is growing political interest in the no-fault idea, there is still a serious dearth of understanding about the actual experience with and implications of this model. And there is now much less excuse for that gap because, especially in the United States but also in Canada, serious analytical and empirical work is being done about the operation and the effects of no-fault workers' compensation. One reason I know about that research is because I have had the good fortune to have working for me on my own projects two of the very best specialists in this field, Bill Johnson of Syracuse (who is somewhere in this room) and Kip Viscusi of Duke. And to illustrate the value and importance of such research, I will mention briefly three crucial topics in the debate about no-fault, and the research findings which should be crucial to that debate.

Cost An immediate issue is that of costs. The no-fault idea is often promoted as a way of containing or reducing the expense of liability insurance. The assumption is that even after the expansion in basic coverage, there would be a far greater saving in damage awards and administrative expenditures on litigation. I expect that a good many employers in Ontario — some of you in this very room — may have laughed somewhat hollowly when you heard or read such claims made in the past year's debate about motor vehicle liability insurance. Nor should we be under any illusion that the steady and steep rise in WC costs is peculiar to Ontario or even Canada. In the United States, employer expenditures rose from about $ one billion in 1950 to $30 billion in 1985 — a 30-fold increase which was roughly proportionate to the expansion in all forms of tort coverage during that same quarter century.

Still, both Canadian and American employers remain committed to the principles of workers' compensation. Certainly they would react with horror to any potential repeal of the WC program that would thereby expose employers to tort litigation by their injured employees. I believe these sentiments have two roots.

First, while the costs of WC are steadily rising, they do so at a reasonably predictable pace. True, there is one recent exception in this province, due to the unfortunate fact that early in the 80s both the Board and the Government stumbled somewhat in the methods they used to institute and to finance inflation adjustments in long term pensions. But there is no doubt that the costs of an administrative no-fault system which pays a defined share of the economic consequences of injuries are much more predictable — and thus more easily adjusted to by the firm — than are the costs of tort liability insurance which are so dependent on the fortuities of litigation (especially in front of juries) about the issue of fault leading to at-large damage awards.

Second, and even more important, sophisticated employers realize that at least over a reasonable time frame, they will be able to recover the increased costs of WC from somewhere else. Whatever the popular and political rhetoric, the Workers' Compensation Board is not a Robin Hood which collects money from rich businesses in order to distribute largesse among poor workers. It is true that employers do write the checks for WC assessments. However, these increased labour costs are then passed on to others — primarily to workers themselves, in the form of lower compensation than the

employees would otherwise enjoy. Nor should one be at all surprised by this outcome. If one assumes that workers do value this kind of disability protection — just as they do other fringe benefits paid for by the employer — then one should expect that employees will be prepared to accept the lower compensation which employers must offer them in other parts of the compensation package in order to pay for increases in this item of the firm's costs of production. Nor is this any longer just an hypothetical prediction from fancy economic theory. We now have documented proof from American research that, within a reasonably short time frame, increases in WC premiums to employers are matched by reductions in the direct compensation earned by the employees from these firms. Thus, in appraising the pros and cons of increases or cut-backs in WC benefits, the crucial starting point must be frank recognition that this program is actually paid for by healthy workers to provide the kinds of benefits needed by disabled workers.

Cause Of course, WC is a rather peculiar form of disability benefit. In fact, it should really be called workplace rather than workers' compensation, because its protections and benefits are offered only for those disabling injuries which "arise out of and in the course of employment". From a compensation perspective it does seem rather strange and inequitable to have the payment of disability benefits turn on the source — i.e., the etiology — of an injury rather than on the injury's consequences, the needs it creates among the worker and his or her family. Also more and more visible is the fact that to insist on cause as a precondition to entitlement produces administrative costs in a no-fault program that, while still far less than under tort/fault, are quite substantial and are growing.

Nor, on closer examination, are these administrative costs and difficulties evenly distributed. In the cases of traumatic accidents, this is not a particularly serious problem overall. For the bulk of workplace accidents, and also for motor vehicle accidents, it is reasonably easy to identify and attribute the injury to its source. However, in the case of serious long-latency diseases, (e.g., lung cancer among foundry workers), very serious difficulties have been encountered in Ontario workers' compensation. (And I might add that much of the Board's problems with back conditions are attributable to the fact that these disabilities share more of the characteristics of a disease than of an "accident").

This same factor is also the reason why, however initially appealing no-fault patient compensation might appear as a substitute for medical malpractice litigation, there would be substantial difficulties in its implementation in that setting. At least in the workplace context, the employee comes to work healthy, and thus if he or she goes home unhealthy, one has a fairly reliable basis for judging whether the disability arose out of the job (again, long latency diseases being the exception). But when patients go to a doctor or a hospital typically they are already unhealthy, and the treatment they need is itself often traumatic in character. Thus, it is an inherently difficult task to try to disentangle the disabling effects of the illness, or those effects expected from the treatment used, in order to isolate and pay for only the disabling consequences of some accidental injury which may have been the by-product of the care received in the hospital. As those administering forms of no-fault patient compensation in Sweden and New Zealand have found, it is no easy task, (e.g., to distinguish infections caused by the patient's original wound from those picked up in the hospital, or to decide whether the harmful side effects of chemotherapy or prescription drugs should be compensable or not).

Control Reflection on these and other injury settings, (e.g., product use causing injury to consumers or bystanders), has suggested to many that while no-fault WC may well be a signal improvement over fault-based tort liability, it is best viewed as a halfway house on the road to the preferred destination of universal disability insurance (in particular, for earnings losses, since we already have such insurance for most health care costs). I know that Terry Ison has always been an eloquent exponent of that view, and I have felt the tug of its attractions myself.

That position is most compelling from a vantage point in which we look back at those injuries which have already occurred, which we must accept as a fact of life, and as to which we must now decide what is the most humane and sensible mode and level of compensation. The problem with that perspective is that it brackets out the equally compelling question of what effect this system of compensation might have on the likelihood that the injury will occur in the first place. The fundamental argument for retaining WC as a separate, self-contained system of workplace compensation, a program which confronts employers with meaningful financial incentives through an actuarially credible insurance rating scheme, is that this system can also make a material contribution to reducing workplace injuries.

In my second report on WC I

reviewed the analytical reasons why one would expect such a desired incentive effect with respect to the original occurrence of the injury. Recently Michael Trebilcock of the University of Toronto Law School has observed that I downplayed a further such incentive effect. Even for those initial injuries that do take place, the magnitude and the duration of the disability may itself be materially affected by the inducements for rehabilitation which the compensation program directs — or does not direct — at the Board, the employer and also the employees themselves.

This also is no longer just an analytical claim. We now have a body of a research which corroborates this expectation. The latest and most powerful study is by Kip Viscusi, my economist colleague in the ALI study, who has shown that the current WC program in the United States has actually reduced workplace fatalities by nearly 30% from what they would otherwise have been. In tangible terms, this means that WC saves roughly 2,000 American worker lives every year, a far more powerful effect than any yet detected from enforcement of occupational health and safety legislation. And when one pursues further the economic implications of this WC effect, it turns out that such a reduction in the risk of workplace injuries in turn reduces the amount of extra wages which employers must pay to induce workers to face these hazards on the job. Taken together with the wage substitution effect I mentioned earlier, the remarkable conclusion, then, is that WC in the United States now more than pays for itself from a financial point of view: and this is a finding about U.S. state programs which are generally less extensive, and thus produce less of an incentive effect, than does WC in Ontario and the rest of Canada.

If one takes seriously this mode of analysis and research, it would seem premature to consign the no-fault policy to the history books. Again, one must introduce certain qualifications. Thus, for reasons I explained in my second Ontario Report (though I cannot go into them here), one should not expect any such significant preventive effect of WC upon long-latency industrial diseases. Again, that expectation has been empirically corroborated by Donald Dewees of the University of Toronto, another economist colleague of mine in the ALI Study. Ironically, then, the preferred future for disability policy may well be in precisely the opposite direction of New Zealand: i.e., comprehensive disability for disease (including occupational disease) but specialized no-fault programs for different categories of accidents.

Conclusion I do not mean to state the last in too strong and dogmatic a fashion, because I realize how many complications must still be considered. But I do mean to leave you with the sense that the no-fault idea has a real future as well as a storied past. And to reiterate the observations I made at the outset, it is high time that public policy makers and tort scholars immerse themselves in the experience with and the research about workers' compensation, where implications of this no-fault model have been most vividly and visibly displayed.

Thank you.

LEGISLATIVE REFORM

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PANELISTS' REMARKS

RON ELLIS, Q.C., CHAIRMAN,
WORKERS' COMPENSATION
APPEALS TRIBUNAL

I have assumed that my assignment did not include a rigorous critique of both Dr. Elgie's and Professor Weiler's papers. As many of you here would realize, if given that assignment, I would want to receive submissions from everybody here, take eight months and write a two hundred and six page dissertation. I assume that was not the assignment.

I have also been given 15 minutes so I will not be able to do too much damage and I do not intend, I think, to take that long because I suspect that the give-and-take in the question and answer period will prove to be the more interesting part of this part of these proceedings - with great respect to Professor Ison.

What I propose to do is to report to you on a couple of aspects of the two papers that especially piqued my interest as I listened to them from the special perspective that my position as Chairman of the Appeals Tribunal provides me with. And they are a couple of observations I think you might find of interest and which might contribute something to the discussion that this program is designed to begin.

The first thing that struck me is the importance – really the central role that the problem of adjudicating workers' compensation issues has played in the development of the workers' compensation system over the years. It was really the problem of adjudication – dissatisfaction with the way in which the courts were adjudicating the issues in personal injury matters relating to workmen – that created the idea of a separate workers' compensation system. It is also apparent, I believe, that it was the problem of adjudicating the wage-loss issues that may be seen to have moved the Ontario system, almost immediately, away from the wage-loss principles of Sir William Meredith into the clinical pension type of system. Professor Larson talks about the administration problems being the major influence but at that time, as you all know, administration and adjudication was one and the same thing.

Then in the 60s and 70s it was, in my respectful view, the failure of the Board's adjudication processes to respond adequately to the developing consumer rights environment in the province (and I think, this applies across the country as well) which created the pressures which led to the reform movement of the late 70s and early 80s. And those pressures were contributed to, very significantly, in my view, by a development not mentioned in Dr. Elgie's speech - that is, the appearance of professional advocacy resources - on the side of workers in the first instance - in the 70s. The Injured Workers Consultants and Iavco, were two specialized clinics that grew up in Ontario in the 70s and there were a number of other clinics that became active in workers' compensation matters.

It was the appearance for the first time of people who were experienced professional advocates knowledgeable about the system that put the adjudication processes of the Board under severe pressure to which in the end they were unable to respond effectively.

In respect of those resources, I think it is correct to say that the employer community was out-manned for a number of years – critical years in the 70s – in that respect, and it is only recently that the employer community is itself acquiring a similar advocacy resource of professional, competent, experienced, specialized advocates. The impact of those advocacy resources on the adjudication processes evolving across the country are one of the major influencing factors at work today in my submission.

I think it is also clear – most people thinking about it would agree – that when we come now to 1989 and 1990, and Bill 162 in Ontario, that the success or failure of the Bill 162 concepts will in the end depend on whether we can successfully adjudicate the very difficult issues that are presented by a wage-loss and return-to-work system.

I would suggest to Professor Weiler that if the workers' compensation sys-

tem is to be regarded as a laboratory for other no-fault systems of discrete natures, such as the no-fault system he has suggested with respect to medical malpractice and the one we are now seeing evolving with respect to motor vehicle injuries – that is, if the workers' compensation system is to be a useful laboratory in all respects for assessing those possibilities – then much more needs to be done in the way of studying and criticizing the adjudication structures that are to be found there – and their merits and short-comings. In my view, there has been very little academic study done in this particular area and it is a shortcoming in the work of the academics, the importance of which is being underestimated.

Finally, on a separate but related subject, I was interested in Professor Weiler's mention of Professor Trebilcock's indication that he thought Paul had underestimated the impact of the workers' compensation system's pressures on the rehabilitation of workers, and I thought of the chronic-pain situation in Ontario today. Between the Appeals Tribunal and the Board, as you know, in Ontario, chronic-pain conditions are now compensable. Since they are compensable, therefore they are now the Board's responsibility to deal with from a medical rehabilitation point of view and the Board is now into a very early intervention strategy in respect of soft-tissue injuries designed to minimize the development of chronic-pain conditions. And while it is very early to be making any assessment, and there is no data – which is always a situation I generally prefer, as many of you would say and I will say it before you do – I think there are good grounds to believe that as a result of recognizing chronic-pain conditions as being compensable we are going to end up with much less in the way of chronic pain conditions in industry-related injuries and I suspect that it will someday be shown that, in fact, by adding the chronic pain components to the recognizable compensable categories of injuries, we have produced a net reduction in the total cost of compensation.

What I would finally like to draw to your attention is, what I think, to be one of the key factors in the development of the compensation structures and systems and principles in Ontario in the last five years. I refer to the nature of the relationship between the WCB on the one hand, and the Appeals Tribunal on the other. It is very often said in the media and elsewhere that the Board and the Appeals Tribunal are competing for turf in the workers' compensation area. But, I am here to tell you, and I am sure Dr. Elgie will join me in this, that that has never been a factor in the relationship. The relationship from day one has been one of mutual respect, occasional disagreement (as one might expect), but mutual respect about the commitment of both organizations to a professional treatment of their own responsibilities and the ability of the two organizations to work together in good faith. I think that marks Ontario, on the basis of understandings I have of comparable relationships in other places, as quite unique. If the academics are looking for further places to study I would recommend examining the mechanics and the nature of that relationship, how it developed and how it works because, in my view, it has been one of the central reasons for what I, biased, of course as I am, consider to be a highly successful restructuring of the appeals process in Ontario.

Thank you.

PROFESSOR TERENCE C. ISON,
OSGOODE LAW SCHOOL,
YORK UNIVERSITY

Thank you Mr. Chairman.

I would just like to say a word of thanks to the Board for inviting me to participate in this tribute to Sir William Meredith. It is very fitting to honour the memory of a very great man and a very good system designer. It is also a tribute to Bob Elgie for his broad mindedness in extending this invitation. The Chairman introduced the previous speaker as a person who carries out his work with great diplomacy. I do not think anybody has ever said that about me, so it is a tribute to Bob's broad mindedness that I have been invited to join in.

Let me say a few words, first, about Bob's speech. There were some things at the end which I almost wish had been the main theme because I would be much happier talking about them. He mentioned some very positive developments that I gather Alan is going to talk about later, which are taking place at the Board: the decentralization of claims adjudication, the integrated service units, the decentralization of clinical rehabilitation, and probably, I am a bit more doubtful about this one, but probably also the new penalty assessment system. If you want to hear me make a good cheerful speech anytime Bob, pick one of those topics and I will be happy to talk about it.

As far as the historical review of the system in Ontario is concerned I see it basically the same way as Bob does, up until July of this year. Bill 162 was a grave mistake. The combination of moving to a wage loss system for permanent disability, and it is not clear to me at the moment how far this is going to be actual wage loss, and how far it is going to be projected wage loss, but in any event, combining that with an ostensible right to return to

employment, has all the potential for disaster. It is certainly counter-productive in that it is definitely not in the interest of disabled workers. It is doubtful whether it is in the interest of employers and it is certainly not in the interest of the self-employed.

Now this does prompt me to mention one further word, particularly since we are here to celebrate the origins of the system by the Meredith study, and that is, I feel some disappointment about the way in which we have shifted, in recent years, in the methods of system revision, and in saying this I am not talking about Ontario in particular. I am talking about Canada generally. When we think back to what happened here in the period 1910 - 1914 we had a Royal Commission study, and of course Royal Commissions have improved a lot in methodology since that time, but Royal Commissions were used in the revision of workers' compensation again up until the 60s.

All of those Royal Commission reports produced what were undeniably improvements, and so have many of the other studies and many of the other methods of system change. Royal Commissions do have substantial advantages which have been lost in some of the other methods of system change that have been used. Meredith, for example, was a person with about 40 years of experience and of interest in occupational accidents. Public hearings were held of course, and Royal Commissions tend to be more isolated from lobbying pressures than some of the other methods that have been used in system revision. They have had more direct contact with injured workers and with smaller employers as well as the self-employed with less dependency upon representative organizations. They made fact-finding inquiries before coming to conclusions. They showed a propensity, also, to be more analytical and to be perhaps a bit less sensitive to the political pressures of the time and place. They had the opportunity for full-time concentration. Some of the other studies have included that, some have not, but certainly, it is very important that system revision should be undertaken by people who are playing the role of system architect on a full-time basis, at least for a period.

Royal Commissions have also been more advertent to the interests of groups that are less well represented, and I think here, in particular of workers with permanent disabilities, smal employers, part-time workers and the self-employed. We have seen other characteristics of Royal Commissions, a relative degree of impartiality and some degree of expertise in the subject matter, that have also been true of some other types of inquiries, but not all of them.

One other thing that struck me recently is that the Royal Commission studies have all tended to contribute simplicity to the system. Revisions that have come about in other ways have tended to complicate the system, and it is a key to success in the design of any social insurance system to try to keep it simple. I am concerned that the changes that have taken place across Canada, at least in most provinces in Canada, over the last ten years, and other changes that are contemplated, are tending to make the system unduly complicated.

Other advantages of Royal Commissions – they certainly tend to elevate the level of attention that the subject matter receives. The last Royal Commission in British Columbia, for example, in 1966, did attract the attention of top management for a period of time. Now there is no way that top management is going to allocate attention to the design of workers' compensation if that attention is required over a longer period of time.

I am also concerned about making system changes in an ad hoc kind of way, by looking at different bits of the system one at a time. One runs the risk of changes being made that don't coordinate with other changes that may be desired. One advantage of a Royal Commission study is that it does result in the whole system being seen at once so that whatever is being proposed by way of change will be a proposal formulated in the mind of someone who is looking at the system as a whole.

One other consequence of the Royal Commission studies is that once the report has been produced and implemented, and they have all been implemented, the system then tends to settle down. It is a signal to everybody that no further significant changes can be expected for another decade, and that has a great many advantages. It helps the system to settle down, it avoids ongoing controversy, and of course, one of the problems with ongoing controversy about system design is that it creates an unfair advantage for those who have the resources to engage in ongoing controversy.

There is a lot more in Bob's paper, of course, that one could comment on but I cannot go seriatim through it. I want to say a few words about Paul's paper. This was an interesting one in looking at the broader picture and not focusing on workers' compensation. What Paul was dealing with here was alternative ideas for branching out from systems of compensation that we have in areas that are not currently covered by workers' compensation and which are basically covered by what we call liability for negligence, sometimes called public liability or tort liability, the idea of suing the wrong doer. Paul has referred to the idea of "no-fault" systems. I do not like the

term no-fault. I am not blaming Paul for inventing it. The term came into vogue in the 60s in the States, but when you come to think about it — a "no-fault" system — who in his right mind, would ever describe any system only by reference to a feature which it does not have.

Another problem with that term is that it tends to imply that the trouble with the negligence system is the fault principle, and we all know that that is not even the main problem with the negligence system. The main problem is establishing aetiology case by case. Of course, Paul refers to that in his paper and he certainly recognizes, as other people do, that establishing aetiology is probably much more of a problem than allocating blame. This is a problem, of course, that one cannot solve by moving from a general system of negligence to what I call particular compensation schemes, and of course, the idea has been around at least since the turn of the century, of having alternative compensation schemes for different types of accidents. We started off with workers' compensation. In the 60s, of course, we developed compensation for the victims of crime, and since the 60s ideas have been developed of producing further particular compensation schemes, one for motor vehicle, one for medical cases, one for environmental, one for consumer products, etc.

The difficulty with it is that these schemes involve the same problems of establishing aetiology, as tort liability does. If we take medical negligence, for example, New Zealand got away from it; they established one system for compensating all accidents and they included what they call medical misadventure. They abolished medical negligence and they substituted medical misadventure. If we look at it from the standpoint of people who emerge from medical treatment worse off than they had hoped to be, and take the example of somebody who goes into the hospital for an operation and it turns out to be unfortunate, emerges from the experience crippled for life, the commission in New Zealand now has the function of deciding whether that was a result of medical misadventure, or whether it was simply an unsuccessful operation. It is a mess and so what you end up doing is diverting vast resources to the decision-making process. This idea of extending particular compensation schemes is one that I gave a great deal of thought to about 25 years ago when I started work on my first book on this subject. I rejected the idea then and for reasons which are still valid. Nothing of any significance has changed.

Paul ended up with the suggestion that maybe we should have a general scheme for disease cases while developing particular compensation schemes for accident cases. Whatever the ethical arguments may be on that, it is all premised on the assumption that it is feasible to distinguish the disease cases from the accident cases. This was something of great interest to me when I went to New Zealand, because there of course they have a system that does pay compensation for accidents and not for most diseases. So it was of particular interest to me to consider the feasibility of distinguishing accident cases from disease cases.

One of the things that I did was to go through a random sample of cases, about 200 of them, and the main question that I put to myself was, does this case involve any question of distinguishing injury by accident from disease? I came up with an affirmative answer to that question in over 40 per cent of the cases. It is a big problem distinguishing injury from disease. These cases did not involve a problem necessarily initially in the claim but at some stage, either initially or in the subsequent conduct of the case, they involved a problem of distinguishing injury from disease.

Now one thing that is very related to this, of course, is that when governments want to introduce new systems of compensation, one of the policy concerns that they have in mind is to protect general revenue, to protect the welfare system, to protect, what we call family benefits in Ontario. If they are going to protect general revenue then what they tend to do is to require the system to pay periodic payments rather than lump sums, and of course, as soon as you get into periodic payments rather than lump sums you tend to get into problems of what is causing a loss of earnings at subsequent periods in time.

So, if you have a system that pays for the consequences of injury but not for the consequences of disease, or vice versa, the problem of distinguishing injury from disease is one that can come up in the subsequent adminstration of the claim and not simply in initial adjudication. Now, when we think about it, for example, bad backs are a big volume of disability cases; and a large proportion of bad back cases involve the traditional discussion about how significant was trauma compared with ankylosing spondulosis, or some of the other long words that the physicians use. Leukaemia, for example, sounds like a disease and yet we have compensation boards paying compensation for leukaemia resulting from trauma. Arthritis, another problem of cause, an injury is followed in subsequent years by arthritis. Was that the fault of the trauma or would this person have got arthritis anyway? etc. I just do not believe it is adjudicatively feasible, in any satisfactory way, to distinguish between injury and disease without getting into some very untenable distinctions and very high levels

of adjudicative costs, and without also doing therapeutic damage in this process of protracted investigation and determination.

One of the other consequences is that we would in practice, end up with a system that still pays inadequate benefits for disease. What we have tended to do in the past, is to compensate relatively generously in trauma cases and to compensate relatively miserably, if at all, for the victims of disease. I am very apprehensive about perpetuating the distinction for those reasons.

There is one last thing that Paul mentioned that I want to cover because it is frankly a mistake. Paul mentioned that one of the things that attracts him about the idea of particular compensation schemes is that you can allocate the compensation cost by reference to the cause of the disablement. He referred to my idea for a social insurance plan and said that it has this limitation, that you end up without allocating compensation by reference to the cause of disablement. If he reads my plan again, he will find that is just simply not what I was saying. What I am saying essentially is this: that when it comes to paying compensation, it is counter-productive to inquire into the cause of the disability. You can get on with things a lot quicker, you can eliminate a lot of injustice, if you develop a system that pays regardless of the cause of the disability. When it comes to distributing cost, that is entirely a different matter. There is no reason why we should not continue to inquire into cause for the purpose of cost distribution. What's more, we can do it far more efficiently in the context of a social insurance system than we can under present systems.

One of the problems with the present system is that in order to decide on cost distribution, we have the enormous expense and delay of deciding what caused this particular disability in this case. If we switch to a social insurance system then we can still distribute cost by reference to cause and we can do it more effectively using aggregated data.

Let me just give you one example of cancer among coke oven workers. We all know that some of it results from employment. We also know that coke oven workers would get a lot of cancer even if they were not coke oven workers. What we do under the present system is to determine, case by case, what caused the cancer in this particular worker, and of course we all know that often that is close to impossible.

What we can do with a comprehensive system is to say quite simply, all those who are disabled by cancer are eligible for benefits. When it comes to distributing cost, we can now use epidemiological data for cost distribution in a way in which we could never use it for deciding individual claims. Then we can determine in a more rational way how much of the cost ought to be allocated to employment and perhaps particular types of employment. This of course is not just pure theory, it's done in practice.

In New Zealand, for example, they pay accident claims regardless of cause, but when it comes to cost distribution they do distribute cost between employment, the use of motor vehicles, and general revenue. What's more, when it comes to injuries resulting from employment, they do distribute cost to particular types of employment, much the same way as we do.

The other aspect of this is that if one adopts the economic arguments that Paul adopts, he is adopting the traditional economic argument, that if you allocate cost by reference to cause you create an incentive to care, and of course it is the traditional argument of economists. There are some counter-arguments that are more subtle, but if one accepts those arguments, and to a large extent I do, then they can be adopted and integrated far more efficiently under an advanced social insurance system, then they can under a more fragmented system. If we take experience rating for example, there are all kinds of problems with it in the context of a workers' compensation system. A lot of those problems disappear if it's introduced in the context of an advanced system of social insurance. So what I am saying is this, that it is quite wrong to say that social insurance would undermine or remove any incentives to care. It could if it is set up in a particular way. But the potential is there to design a social insurance system that would create incentives to care far more effectively than other alternatives.

Now as far as Paul's proposal is concerned, of a comprehensive system for disease and categorized systems for accidents, one can judge that idea in various ways. Would it be an improvement on the status quo? It probably would. Is it the best that we can do? That's a question of pragmatic politics and that is not my forte. Paul is an astute politician and if it is his judgement that this is the best that can be done in the time and place in which he lives, I would accept that. I accept that this is probably politically the best that can be done in the United States. I am not yet cynical enough to believe that is the best we can do in Canada.

Thank you.

REMARKS
BY THE HONOURABLE GREGORY SORBARA

Ontario Minister of Consumer and
Commercial Relations
and the former Minister of Labour

Wednesday, September 20, 1989
Metro Convention Centre
Toronto, Ontario

Well, thank you very much Gerry*, that was the most interesting way I have ever had a message sent to me about the validity of my remarks I have ever experienced. Generally, it is just my staff, who would say to me: "For God's sake Greg, don't go on at the mouth, these people really just want an opportunity to digest a dinner before they go on to the next part of the Symposium." Well, I thought, I hope to keep it short, for this is an opportunity that I really welcome, an opportunity that I feel somehow I can meet because I'll tell you something about politicians who are often called upon to speak of subjects and of situations where they have to rely, primarily, on the expertise of others who have to tell us what the solutions are and what the appropriate message should be. Having that experience for four years in politics this is one of the few occasions where I feel I can come to the podium after two years of experience that gives me a very solid foundation to participate in this 75th Symposium. Notwithstanding that Gerry, notwithstanding the fact that in other venues reflecting my two years as Minister of Labour, I do have some stories related to Bill 162 though.

I want to, let's say, just cover three areas. I do want to talk a little about Bill 162. I understand that you discussed this matter this morning and had a very interesting panel discussion.

I want to make a few comments about what I think the state of the WCB in Ontario is today as it celebrates its 75th anniversary. I want to just try and offer a few suggestions as to what I think the next 25 years will bring to the Board and to this province.

Before I do any of that I want to take a moment to welcome those of you who have come to this Symposium from other provinces. Je suis très content que vous êtes ici avec nous pour céléber l'anniversaire de la Commission. We are delighted to have you here — Boards from across Canada. I understand and hope that while you are at this Symposium you can take away from it some interesting reflections of 75 years of history in Ontario.

I want to thank the Board for continuing the invitation that I originally accepted as Minister of Labour to speak at this luncheon. I should tell the Board publicly on this occasion that there is no portfolio in government that is more challenging, interesting and satisfying. Other Labour Ministers have had the same experience as we left the responsibility as Minister for an opportunity to go on to new and interesting jobs in other areas of government, but certainly a sadness to no longer have an opportunity to manage in a policy context, a portfolio which touches every single workplace in this province.

Those of you who understand the nature of workplace issues know that in the absence of an effective regulatory, and programmatic framework for workplaces in Ontario, there is not much else to do in the province because that is where we generate wealth — personal satisfaction that gives us resources and a sense of pride, and makes everything else a possibility in the province.

So Gerry, I just want to tell you that you've got some of the most interesting challenges that anyone could ever ask of you. So first, reflections of Bill 162: obviously the Bill has been passed now, part of it is law and as I understand it, the rest of the Bill will be proclaimed probably as we enter 1990. There were some people when the debate was over who said to me: "Greg, I guess you are glad that's finally over. You are done with it. You're anxious to move on to other portfolios". Those were interesting comments because for me, my reaction, deep down, was of sadness. I was, in a sense, a little bit sorry that it was all over. Why would that be the case? Certainly I was delighted that the Bill was passed. I felt right from day one as we put the Bill forward in the Legislature that this would commence a fundamental

reorientation of the Board — a vital instrument in this province for at least the next 25 years. Who knows what the issues will be to celebrate our 100th anniversary. So why the sadness? Simply for this reason: Our province and those who participated in the debate and the discussion participated in an exercise that, I believe, was a model for the formulation of public policy in a democratic jurisdiction. Whether they were dramatically opposed, whether they chose to march on the Legislature or whether they proposed to support the Bill or oppose the Bill in committee or analyze the Bill or from the perspective of small business or big business did exactly what should happen when a jurisdiction like Ontario is considering an initiative of this magnitude.

Today I had lunch with the President of the Union of Injured Workers of Metropolitan Toronto who disagreed about the policy aspects of the Bill and, once again, I tried to reassure him that when Bill 162 is fully implemented the very people that he acts for will be better served by a better system. I also congratulated him for the way in which he participated in a process of formulating a public policy.

We have today, some that have travelled to 15 communities in the province of Ontario. In virtually each case in Ontario the Federation of Labour or an affiliate went there with well reasoned documents to explain why they were opposed. I believe, and I continue to believe, that we had arguments that met with what was in those briefs. He took the time to participate and analyze and to put a position before the people and legislators of this province for consideration.

The Canadian Federation of Independent Business participated in a similar way — business large and small. In short we got the attention of the people of this province on issues that, if you examine, are fairly technical, fairly tricky, touchy, as you listen to the 11 o'clock news. Notwithstanding that, there was a very high degree of participation; ultimately the Legislature, having considered all of these points of view, put into place a Bill for serving and compensating injured workers in this province for the next 25 years.

So what is the state of the Board today from the perspective of the Minister of Labour who served this province for some 22 months? My own designation is that the Board is very healthy indeed, that's not to say perfect, that's not to say that there aren't issues that aren't urgent and pressing, but if you examine the Board from virtually any perspective you'll see a vibrant organization which, after 75 years of history, is continuing to respond to the dynamics of the workplace of 1989. In fact, I very much appreciate the remarks of the leader of the opposition, Bob Rae, who is today considering whether or not to run for federal leader of his party. His speeches in the Legislature were powerful in opposition. Nevertheless they contained references to the statute which his figures said 75-80% of the claims are handled expeditiously, are handled as quickly as any government agency responds to in any circumstance, in any area of large institutions.

That is the true story of the workers' compensation system for 75 years of history. When Commissioner Meredith planted that seed in Ontario 75 years ago his research was exhaustive and his vision was dramatic and powerful, and the extent to which the Board today is able to cope with problems that were never perceived 75 years ago is, I think, a tribute to the Board Chairman.

But that is not to say that we do not face very significant challenges. What will those challenges be over the next 25 years as we move to our 100th anniversary? A number of them come to mind. As I was reflecting on this last night, I kept thinking about the issues relating to industrial disease. I don't think that we have it quite right yet. We have, for example, a system which calls upon employers, who may have started up in business 5 or 10 years ago, a responsible and economic and great assessment way for the faults and errors and damage that was done to workers 40-50 years ago. There's something wrong in that sort of situation. Meredith said, 75 years ago in his report: "Don't forget about industrial disease; this is not just a loss of a finger or the breaking of a leg, don't forget about the industrial disease". And I don't think you could contemplate the accentuation of science, that, in 1989, could delve back into history to evaluate the circumstances of gold miners working pre-1945 in the northern part of the province. We have to come to terms with that.

You also have to think of every initiative possible to ensure that in workplaces of this province we are taking every step possible to ensure that workers are not exposed to the situations which would give rise to industrial disease. We have not got that problem solved yet. We will get it solved when Gerry passes Bill 208, but that's another story.

And that brings me to a secondary event that we'll be dealing with the next 25 years and that is the way in which we organize ourselves at our workplaces to deal with the issues relating to health and safety. This is extremely important, not just from the circumstances of the individual worker who spends a risk when he/she goes to work, but because as a soci-

ety we're moving as a culture and as people with much higher expectations in that area and as we move in that direction, government, employers, unions, and workers must find ways to ensure that there is an opportunity for all 4 players to participate effectively in the management of health and safety in our workplaces. It's going to be a topic that will continue to, I think, request of us some challenges. It may well be down the road that there is a coming together of the management of health and safety in our workplaces, and the system of the WCB which is the compensation side of that exercise. These issues will be a central focus over the next few years.

We are also going to have to come to terms with the issue of universality. It was only last Friday that the government of Ontario put forth, for public consideration, a system of threshold no-fault in the case of automobile accidents: The Ontario Driver Protection Plan. That is the work of the Compensation Board that a no-fault system will ensure that in every case where a worker is injured he/she will be appropriately compensated and now we are offering for public consideration that sort of system in the area of our insurance. What does that say to the worker who happens to fall off the line and fall? What does that say to the individual who is suffering from a debilitating disease which does not arise from the workplace or the problem of an automobile accident or whatever? I don't want to pretend to have magic answers to that sort of question but it's wrong, I think, that we will be debating vigorously in this province within the next few years, but clearly the expertise of the WCB that 75 years of history will be relevant to back that debate.

No doubt the question of whether one would want to report totally, the mechanisms will be one of the issues that will characterize that debate. Fortunately, we have in the Province of Ontario, a 75 years young system which gives us the wealth of experience in the Ministry in the area of no-fault compensation and finally and inevitably over the next 25 years we are going to be talking about the administrative side, about how more effectively to deliver the service. How to ensure that in 99 cases if not 100 cases all of those who deserve compensation are compensated at the levels which are appropriate for the injury and the impairment — that that be done quickly.

If a worker is living in my riding, and you tell me that you think the claim is going to be alright but we are not going to hear for 3 1/2 years, we have not yet delivered and we are unable to meet, and as the workplaces change, technologies change and expectations of the people change, the administrative challenges will remain to be very conclusive. I want to tell you on this birthday celebration that after 22 months I have great hope and confidence. I bet, we will be able to meet all these challenges.

The Board is not perfect. No agency of government is perfect. No operation of this magnitude, whether a public sector agency or a private sector business, is not without weaknesses. The trick over the next 25 years will be for Gerry Phillips and his successors, together with the Board, employers, worker representatives and people at large to be able to identify those weaknesses and solve them just as quickly as possible.

Thank you Dr. Elgie for inviting me to speak at lunch today. Good luck with the rest of the Symposium and I want to tell all of you who I know around the room as a result of my tenure of late, and my responsibility of the Board, have a very, very pleasant Symposium. God bless you all.

*Gerry Phillips succeeded Gregory Sorbara as Ontario's Minister of Labour, and introduced Mr. Sorbara.

MEDICAL AND VOCATIONAL REHABILITATION

NEW APPROACHES TO MEDICAL AND VOCATIONAL REHABILITATION

Notes for remarks by Dr. Elizabeth Kaegi, Vice-President, Policy and Specialized Services
Workers' Compensation Board

Wednesday, September 20, 1989
Metro Convention Centre
Toronto, Ontario

It is a great honour for me to represent my colleagues at the Board at this Symposium today. The strategies I will be talking about are the product of the creativity and hard work of many members of Board staff assisted by advice and suggestions that were given freely by our stakeholder community.

The Ontario Workers' Compensation Board deals with about half a million claims annually from injured workers. Half of those claims involve health care services only, but the other 250,000 workers lose some time from work because of the nature of their injury. The vast majority return to their pre-injury work, but there is a significant number of workers who encounter substantial rehabilitation problems.

To better meet the needs of these workers, the Ontario Workers' Compensation Board has recently developed new approaches to both medical and vocational rehabilitation. These new initiatives hold the promise of more complete and more timely recovery from workplace injuries with all the advantages that implies.

First with respect to medical rehabilitation, the strategy developed in 1988 addresses a number of significant deficiencies in the pattern of health care for injured workers.

The major focus of the strategy at this time is on soft tissue injuries. These apparently minor injuries – sprains and strains – account for 140,000 lost-time claims each year. Too often workers who have suffered what seem to be relatively minor injuries are disabled for months and months, and a significant number of these workers never recover sufficiently to return to their former level of activity either in their personal lives or at work.

Effective treatment programs for these patients are often difficult to identify particularly in smaller centres. Furthermore, services that do exist can frequently not be made available in a timely manner and lengthy waiting lists are common.

In late 1986 and through 1987 the WCB established a number of pilot projects in 12 locations across Ontario to study alternative approaches to the medical rehabilitation of individuals with soft-tissue injuries. The Board's senior medical consultant, Dr. Robert Mitchell, designed the pilots to test and refine a treatment model developed by Dr. Alf Nachemson in Sweden, sports medicine clinicians, Dr. Tom Mayer in the U.S. and others who have demonstrated that patients who have suffered a back strain are likely to suffer several more bouts of back trouble, whether they return to full activity or not and that the best treatment program is one that returns these patients to their regular activities as soon as possible after their injuries. By adding an educational program to help the patient deal with subsequent bouts, individuals are placed in a better position to capitalize on their abilities and to live fuller, more productive lives.

From May, 1987 through May, 1988 the pilot clinics offered treatment based on these new concepts. The results of the pilots were clear. Patients who were treated in this model recovered faster and more completely than patients in a matched control group. Furthermore, the incidence and severity of recurrences, and the degree of permanent clinical impairment seemed to be at a lower level than in the control group. In addition, injured workers who were treated at community clinics expressed their support and appreciation for the program. In a patient satisfaction survey, 67% said that their general fitness level improved as a result of the program; 79% said they continued an excerise program on their own and 82% indicated that they would recommend the program to other people with similar injuries.

Based on these results, results which I am pleased to say have recently been accepted for publication in the international medical journal "SPINE", the Board has moved to facilitate the establishment of a net-

work of "community clinics" providing treatment programs patterned on pilot projects as part of its new medical rehabilitation strategy. It is envisaged that there will be 50 - 100 of these clinics across the province with full implementation of the strategy and we are happy to report that we expect about 50 to operate by November of this year.

The community clinics, which are paramedical in orientation, will accept patients referred to them by treating physicians as early as five days after a soft tissue injury. This early quick referral into a treatment program will help the patient maintain a pattern of leaving home every day for work – this time, though, for work at rehabilitation.

Patients referred for treatment at a community clinic attend the clinic for one hour per day in the first week, and two hours per day in the second week. Treatment consists of intensive, individualized physiotherapy, including physical modalities to relieve pain combined with gentle, active exercises increasing each day as the patient improves and the injured part regains mobility and strength. By the end of two weeks of treatment, the majority of patients will have recovered to the point of full activity – without substantial loss of general fitness.

For patients who have not recovered, a half-day program five days per week for a maximum of four weeks is available. The half-day is filled with individual physiotherapy, group exercise to maintain general fitness, and educational sessions covering the mechanics of injury, and injury prevention and injury care. The program becomes progressively more active over the four weeks and is quite physically demanding.

One of the chief features of the new program is the active involvement of the patient in the rehabilitation process. The tendency in the past has been to let patients be the passive subjects of rehabilitation efforts, but with the new approach, patients participate very actively in the process of getting well, setting their own goals and planning their programs.

There is no doubt that this is an expensive program. When fully established, it is projected that the community clinic system will serve about 100,000 workers each year and that it will cost the Board between $40 and $50 million dollars annually in health care costs. But as indicated, patients in these programs have been shown to recover faster and more completely. The results of the pilot projects allow the Board to project a shorter period of disability and, consequently, lower income support will offset the increased health care costs associated with providing the more intensive programs and expensive health care described above.

Some community clinics have already started operating, and we expect that more than 50 community clinics will be operating by year end. The clinics will all be independent of the WCB, and the Board will purchase services from them on a fee-for-service basis. The Board's goal is to encourage the establishment of enough clinics that all injured workers will have access to the programs within a reasonable commuting distance from their homes. Recognizing the services that chiropractors already provide to injured workers, the Board is working with the Ontario Chiropractic Association to facilitate the development of three chiropractic community clinics set up on a similar basis to the paramedical clinics to provide a daily, active, intensive program of treatment exercise and education.

The new community clinic system constitutes, however, only the first tier of new services under the Board's medical rehabilitation strategy. The second tier was designed to deal with a smaller but still substantial number of workers — about eight to 10 thousand per year — whose recovery from an injury is prolonged. These patients may have entered a community clinic program and for some reason are not responding to treatment or they may have been receiving care outside the clinic stream.

A second tier of services consisting of approximately 12 regional evaluation centres has been established to aid treating physicians in sorting out the complexities of these cases, and also to assist the Board in discharging its responsibility to provide for the necessary rehabilitation of injured workers, at least 10 of these regional evaluation centres will be in operation by November, 1989.

The centres will see patients referred to them by their treating physicians, or by the Board. They will provide comprehensive medical or health care assessments of the patient to confirm the diagnosis, to review the treatment to date, to establish the prognosis and to outline recommendations for future treatment. The assessments will be multi-disciplinary and will include physiotherapy, occupational therapy, and, when necessary, social work or psychological assessments in addition to the medical and/or surgical consultations required.

Those individuals whose condition has stabilized medically but who are nonetheless left with significant functional restrictions may also require a "functional abilities evaluation" to identify their abilities and any limitations that should be considered when planning a return to work. These assessments will be requested

through the WCB and the report of this thorough, multi-disciplinary functional assessment will form the basis for the development or refinement of a vocational rehabilitation plan for an individual.

The regional evaluation centres will also provide consultative and advisory services in their regions, and they will have a significant research and education function. Like the community clinics, they will function independently of the WCB, and the Board will contract with them to provide the needed services on a fee-for-service basis. As with community clinics, the regional centres will be encouraged to provide services to clients other than injured workers.

The third tier of the medical rehabilitation strategy is a provincial medical rehabilitation institute. The establishment of the institute will be made very shortly. The institute will be supported by an annual grant from the Workers' Compensation Board, although it will be free to seek additional funding from other sources. It will be operated as an independent organization with its own Board of Directors.

One of the most challenging responsibilities of the institute is to conduct and coordinate research into methods of achieving the effective and efficient medical rehabilitation of injured workers. The institute will also be involved in monitoring the quality of the care delivered in the community clinics and the regional evaluation centres, both to ensure there is consistency in care across the province, and to observe and learn from variations in regional experience. If one clinic is getting particularly good results from a specific education program or exercise technique, the institute will be able to identify this and recommend other clinics adopt similar practices.

Since it will be on the leading edge of medical rehabilitation, the institute will also work with the professional schools and associations to develop curricula for training health care professionals in the newest rehabilitation theory and techniques.

With this new multi-level program of enhanced care, it will become more and more likely that injured workers will return to full pre-accident activities. Those who do suffer more serious and permanent injuries should experience less permanent disability. For these workers whose permanent disability prevents them from returning to their former jobs, the Board developed a new approach to vocational rehabilitation, in 1988.

The goal of this new vocational rehabilitation strategy is to help this special group of workers by providing them with assessment, training and specialized programs designed to lessen the impact of the injury on the worker and to assist the worker in returning, to the greatest extent possible, to his or her former situation. From an earnings point of view we try to help the worker re-establish his or her pre-injury earnings profile.

The earnings profile of a worker is his or her pattern of annual earnings over a working lifetime. I will highlight two examples of earnings profiles. The first earnings profile represents an individual who starts off in a professional training program. After several years of training at a low income, qualifications are gained and a new, higher income level is achieved and maintained. The second earnings profile is that of an individual who works progressively through an organization gaining skills and experience through on-the-job training. Regard-less of when in a person's life an accident occurs, the Board will aim to help the individual achieve the earnings profile that was reasonably anticipated before the injury.

To guide vocational rehabilitation efforts, a hierarchy of objectives has been established. First, all efforts will focus on returning the worker to his or her pre-injury job. The first question Board staff will ask is this, "Is it possible that with some additional medical rehabilitation, the worker could return to the pre-injury job?" If the answer is no, the next question is "Are there modifications to that job that could be made that would allow a return?"

The emphasis on return to the pre-injury work is intentional and well-founded. If such a return is achieved, disruptions to the worker's life — and to the employer's operations — are minimized. The worker's dignity is maintained, his or her social support network continues, and the income level is kept relatively stable. Sometimes simple modifications to the job in terms of the nature of the tasks or their timing are all that are required. The Board provides assistance, both technical and financial in this regard.

If it appears that a return to the pre-injury job is not open to the worker, the availability of a comparable job with the accident employer will be investigated. The rationale for this is that the Board has found that the maintenance of the worker-employer nexus is important and increases the likelihood of a successful return to work.

If a comparable job is not available with the accident employer, the Board will proceed to investigate the availability of a comparable job with another employer. If no such job is available, the Board will work with the worker to find alternative but suitable work with the accident employer, and if that is not possible, then with another employer.

Just as important as this hierarchy of objectives is the timing and method of working through the hierarchy.

The Board accepts the conventional wisdom that early intervention is desirable but insists that care should be taken to ensure that an intervention is only made where vocational rehabilitation is likely to be necessary. Automatic early intervention carries with it a risk of delays and inappropriate interference in the life of a worker who does not need a service and who would have returned to his or her former work without the assistance of the Board or an external party.

The Ontario Board's approach is, therefore, to refer an individual for vocational rehabilitation as soon as it is apparent that the worker is unlikely to return to his or her pre-accident job. For severely injured individuals, this will be almost immediately following injury. Workers who remain off work for 45 days after injury will be contacted by the Board at that point and every six weeks thereafter to determine specifically whether return to work is unlikely and thus whether vocational rehabilitation services are required.

In any event, all workers who have been away from work for six months need, at the very least, vocational rehabilitation assessments. If such an assessment reveals that a worker could benefit from a vocational rehabilitation program, one will be offered.

Once a vocational rehabilitation program is in place there is a two week contact cycle to ensure that progress is being made.

Once vocational rehabilitation service is offered to a worker, it is the style of that service that is one of the strategy's most distinguishing features. The old methods of vocational rehabilitation had a counsellor provide support and guidance to a worker in order to facilitate a return to work.

Under the new strategy, the key Board staff person is a vocational rehabilitation caseworker who will work with the injured worker and the accident employer to develop a reasonable and workable plan for rehabilitation. The plan will be in writing and it will outline the respective responsibilities of the worker, the employer, and the case worker. It will contain a full list of necessary activities and a timetable for the rehabilitation program.

This notion of a clearly defined, mutually agreed and written contract is one that has been successfully used in the social work field. It structures expectations, it clarifies who must do what when, and it embodies a commitment from all the relevant players achieving the goal of the vocational re-integration of the worker.

Once the vocational rehabilitation plan is agreed to by the worker, the employer, and the caseworker a copy is sent to the worker's treating physician to ensure that the worker's medical condition does not preclude any of the planned activities, and to keep the physician fully informed with respect to the program the individual will be pursuing.

As the plan proceeds, the Board's caseworker is responsible for ensuring that the parties meet their commitments, and also for procuring the necessary expert advice and services called for in the contract. These may include specialists within the Board. For example, a social rehabilitation counsellor, a worksite analyst or ergonomist or a modified work-program specialist. Other special programs outside the Board may also be arranged – a functional abilities evaluation carried out at a regional evaluation centre; a psychological assessment of aptitude and skills, training programs, etc.

It is significant that the vocational rehabilitation strategy separates vocational rehabilitation from social rehabilitation. In the past, there has been some confusion about the true role of Board vocational rehabilitation counsellors. Some who were particularly skilled at counselling adopted this as their prime activity, sometimes at the expense of concentration on vocational issues and with a consequent loss in the necessary momentum of the process. Others tended to focus clearly on the vocationally related activities and paid insufficient attention to the problem of the worker's adaptation to his or her disability.

Obviously, both types of service are necessary. But the Board will be very clear that when a worker's problem is predominantly vocational — that is, when his or her job requires modification, when he or she needs new skills to meet the demands of a job he or she is physically capable of, or when he or she needs assistance with modification of the workplace — the vocational rehabilitation caseworker will be there to assist.

Where, however, a worker is encountering serious social difficulties that result from the injury and that are interfering with rehabilitation, one of the Board's social rehabilitation counsellors will become involved. These staff will help the worker manage personal circumstances which are impeding rehabilitation efforts and to adjust to the permanent effects on personal circumstances resulting from the injury. Referrals to other community agencies will be facilitated as appropriate and when the difficulties are resolved, a more concentrated and effective focus on vocational issues will once again become possible. It should be noted that both vocational and social rehabilitation

services provided by the Board are available not only to injured workers but also to surviving spouses.

In January 1989, the Board piloted the vocational rehabilitation strategy in three operating units. Though it is still too early to assess the full impact of the strategy, there are strong indications that it will be highly successful.

Board caseworkers have found that the involvement of the employer and physician in formulating a vocational rehabilitation plan with the worker has resulted in a higher rate of return to work and, better still, more workers returned to their pre-injury job. The development of a formalized plan with the setting of realistic timeframes and goals seems to be a very effective way to achieve a greater degree of worker self-confidence and independence, which, in turn, leads to more successful vocational rehabilitation.

Workers have expressed support for their employer's early and active participation because it means that a return to work becomes a much more realistic and achievable goal. They report that they feel more connected to both their employer and their co-workers. The minor modifications of work procedures that are often required to accommodate a disabled worker are more likely to be made.

Employers have also been overwhelmingly supportive of this strategy. They like their new role because it helps them to maintain the employment link with valued employees and also to make a difference regarding their compensation costs. As well, physicians are very receptive to being involved in vocational rehabilitation planning, and have advised Board staff that they have an increased appreciation and awareness of Board operations and policies as a result.

Finally, caseworkers report a more productive and positive relationship with workers and employers. The combination of early and timely intervention, the involvement of all the important parties including the worker's physician, the clearly stated goals and the worker's own sense of involvement, participation and control are all important factors generating this change. Early referral is occurring with the vast majority of workers being referred by 18 weeks.

The vocational rehabilitation strategy will be implemented fully across Ontario in January, 1990. Full implementation will see 18,000 injured workers annually receive vocational rehabilitation help from the WCB. This compares with a pre-strategy annual caseload of about 13,000. As with the medical rehabilitation strategy, a more intensive service, started sooner and available to more people, is projected to increase the Board's expenditure on vocational rehabilitation.

But, as with the medical strategy, the earlier that success is achieved in vocational rehabilitation, the earlier workers will be able to return to work. The expectation is that decreasing periods of disability will more than offset the increased costs of vocational rehabilitation services.

The strategies have been developed with the primary purpose of facilitating the delivery of the best services possible to injured workers. It is gratifying that this new pattern of care also promises to be very cost effective.

The Ontario WCB's tripartite Board of Directors has adopted these two new initiatives with enthusiasm because they represent new hope for many workers who are unfortunate enough to suffer a workplace injury. Now, more workers will recover better and faster through improved medical rehabilitation. And for those whose injuries will prevent them from returning to their regular work, the vocational rehabilitation strategy will provide the prompt, intensive services that are needed.

The key to both strategies is, of course, cooperative effort. Guided by these new strategies, the Ontario WCB will work harder with workers, employers and health care providers to bring about solutions to the complex problems that all workplace injuries present.

Thank you.

APPROACHES TO REHABILITATION OF BACK INJURIES

Notes for remarks by Dr. Michele Battié, R.P.T., Ph.D.
University of Washington Medical Centre

Wednesday, September 20, 1989
Metro Convention Centre
Toronto, Ontario

Good afternoon everyone, I would like to thank the WCB for inviting me to be here with you today and for allowing me to join such a distinguished group of speakers.

Over the next half hour I would like to discuss: some background information about back problems, back pain vs. back pain disability (an important differentiation), treatment approaches and future trends for dealing with this problem, and general guidelines to consider in the treatment and rehabilitation of back "injuries."

Back pain is an extremely common problem and, depending upon their medical specialty, physicians certainly see a lot of it. Back pain is a leading reason for visits to orthopaedic surgeons, neurosurgeons, occupational medicine physicians, and osteopaths and it is the second most common reason for visits to family practice and internal medicine physicians. It is estimated that about two to five per cent of employees each year will see a doctor or miss work due to back problems.

In Washington State, with several of the employers that I have worked with, about 20% of workers' compensation claims have been comprised of back-related complaints. However, the associated costs have typically ranged from 40 to greater than 50%.

Dealing adequately with this problem has been particularly difficult because of our limited understanding of back pain disorders. We seldom know the cause of back pain. In a survey we conducted at the University of Washington's Spine Resource Clinic, we found that when we standardly questioned 100 consecutive patients, only 23 out of 100 stated that the onset of their pain was within 24 hours of an unusual activity or an accident. Another study that was recently reported by Videman found that in first year nurses 73% of back pain complaints could not be tied to any unusual activity or specific sudden onset. Furthermore, there is no verifiable medical diagnosis in the great majority of cases. Alf Nachemson, after his work with the Quebec Task Force on Spinal Disorders, reported that greater than 95% of acute cases have no verifiable diagnosis. Even after six weeks of continued symptoms, no specific diagnosis is available in greater than 85%. After three months, about 70% still have no verifiable diagnosis. Thus, in the great majority of cases we are dealing with problems that are nebulously called soft tissue injuries or disorders that we cannot really verify. Verifiable diagnoses turn out to be such things as herniated disks, spinal stenosis, fracture, infection, tumor and arthritides such as rheumatoid arthritis and ankylosing spondylitis. Other labels, such as lumbago, lumbosacral strain, sprains, myofaciitis, disk syndrome and subluxation are fancy names for back pain of unknown origin.

I really enjoyed Dr. Elgie's quote, this morning, from John Kennedy that when a situation "is not controversial and is beautifully co-ordinated there is really not much going on". If that is the case, we would expect a flourish of activity in the area of back pain because it is certainly never at a loss for controversy. The good news, and there is some good news, that helps us from a rehabilitation standpoint, relates to the natural history. Most individuals suffering from back problems get over their symptoms on their own, in time, even without medical intervention. The natural recovery process is such that time is usually a fairly good healer. Voltaire seemed to have this in mind when he said the art of medicine is keeping the patient entertained while the disease runs its course. And Ben Franklin, in Poor Richard's Almanac, took this one step further when he said, "Nature heals, and the doctor takes the fee". We are dealing with a very common problem that is typically short-lived. It is disability that is of greatest concern. While time seems to be a healer in the area of back pain, it can also work against the patient who is away from normal activities and work for

an extended period. Some statistics from Washington State reveal that once a worker is off work for more than four months without objective findings, they typically lost their jobs at that point. After being off work for six months due to disability, only about 50% return to gainful employment. After one year of time loss, only about 25% return to the workplace and at the end of two years, practically nil.

There was a recent project conducted by Washington State University surveying claimants who had missed three months or more of work subsequent to work related illness or injury. They reported that 12% were retired at the time of the survey, 18% were retired on disability, and 39% of those employed were making less than 2/3 of their prior wages. One of their conclusions was that it is most helpful for the long term employability and economic outlook for individuals to return to their prior employer.

What happens to people with prolonged back pain disability? In the United States many of them make their way to surgery and for the one to two per cent of patients with clear indications, surgery can be a very effective treatment. Henrik Weber's work published in 1978 and 1983, found surgery to be more effective than conservative care for symptomatic herniated discs at a one year follow-up. However, significant differences between the surgical and non-surgical groups were no longer present at a four and 10 year follow-up.

For individuals with unclear indications, surgery would not appear to be the answer. Gordon Waddell, in reviewing admissions to John Hopkins pain clinic, found that about two-thirds were due to back pain. Among those two-thirds, the great majority had had multiple spine surgeries. Very few had no prior surgery. Finnison once said, "no matter how bad the pain is, surgery can make it worse," and certainly when the proper indications are not there, this would seem to be the case. Dan Spengler reported on a study, "Low Back Pain Following Multiple Lumbar Spine Procedures: Failure of Initial Selection". Included in this investigation were 30 consecutive patients who came to his clinic with a history of more than one spine surgical procedure. The patients had an average of 3.4 operations, 28 out of 30 were either drug or alcohol dependent, 17 out of 30 had been divorced, none were gainfully employed and only one felt that their condition was any better than it had been since the onset of their medical symptoms despite all the medical care they had had the benefit of.

Certainly it is the affected individual who suffers the most from this problem, but industry also is affected. If we look at a pie representing all back claims, it can be seen that 10% of those filing claims make up 80% of the overall cost. The cost distribution is very skewed. Again, it is that small percentage that go on to long term problems, who account for the great cost to industry. Back pain poses a problem for society as well. In the end it is the general public who pay for this problem, either through increased taxes, increased cost of goods and services purchases, or as Dr. Weiler mentioned this morning, through earning a lower wage, so that business expenses can be shifted to cover higher costs for health care coverage and workers' compensation.

There have been many figures published, at least in the United States, about how costly back pain is. One figure that stands out, comes from the Social Security Disability Insurance System. Reportedly, from 1956 to 1976 compensation awards increased for back problems by about 2700%. This figure is put in perspective when we consider that the second highest gain was only about 500% for lung problems. Alf Nachemson has reported that over the last 30 years Sweden has experienced an increase in disability awards by about 4000% or 40 fold.

What is responsible for the increases in disability or this particular response to this common problem that has apparently been present throughout the ages? Could it be evolution? Have we evolved, as physical beings so differently over decades to where disability is a more likely response to this problem; unlikely. Has the workplace changed such that it is so much more hazardous for the worker than in the past decades? Increased regulations and safety guidelines which have been put into place over past decades do not support such a theory. Instead, it would appear that there are other factors coming into play that affect our response to back pain in favour of greater disability.

Robertson reported on an interesting examination of the effects of going into the workplace and identifying problems and enforcing occupational safety and health (OSHA) guidelines on injury reporting. He found that identifying hazards and enforcing OSHA guidelines decreased objective injury reports, such as fractures, lacerations, etc., yet there was no decrease in subjective musculoskeletal complaints such as back pain.

We might be able to get some insight into back problems by looking at other parts of the world. Gordon Waddell reported that when an orthopaedic clinic, specializing in back problems, was made available in Oman, large numbers of people came seeking information and help for

back pain problems. It would appear that back pain is as common in that country as it is in North America. However, there was no disability, no one stayed away from normal work activities due to simple back pain. Such a comparison might lead one to wonder whether the well intentioned political and medical treatment of this problem in the westernized world has been in the patients' and the publics' best interest. Stan Bigos went one step further and concluded, "perhaps we are the third world countries with respect to our past dealings with this problem".

Disability creates the greatest problems for individuals, the workplace and society as a whole. Thus, in our early treatment and interventions we need to keep disability prevention in mind as a primary goal. So how do we approach this challenge? Again, at least in medicine, there are few areas of more controversy and conflict. Many treatments are available to choose from and it can be extremely confusing for all involved. There are a variety of physical therapeutics, traction, electrical stimulation, corsets, braces, manipulation, exercises of all types, rest, medications, and a variety of surgeries. It can be difficult, not only for the patient, but also for the health care provider to decide what treatment approach really is going to benefit that individual the most. You might ask why it is that there are so many diverse treatments for this problem. One reason relates to the natural history. If we were to apply hot camel dung three days a week to a group of patients with acute back pain, in a number of weeks the great majority of those patients would be over their symptoms due to the natural history, or recovery process. And perhaps, if it were not something so ridiculous as hot camel dung, but instead, for example, gravity traction, it might be adopted as a new treatment available for dealing with back pain.

What about the old mainstay of bed rest? This is also another area of controversy, although medical and scientific opinion is certainly moving away from bed rest and toward activity. A couple of years ago, Deyo reported on a study "Bed Rest for Acute Low Back Pain: A Randomized Clinical Trial," in the New England Journal of Medicine. Acute back pain patients were randomly allocated into one of two groups: either two days of bed rest was recommended or seven days. Two days of bed rest was found to be superior in terms of a more rapid return to normal activities with no greater complaints of symptoms as compared to those who were recommended bed rest for a whole week.

Conversely, the benefits of moderate, gradually building activity, are being recognized in acute, subacute and chronic back pain treatment. In a recent address by Alf Nachemson to the International Conference on Exercise, Fitness and Health he stated, "The success of activation programs in randomized studies for acute, subacute and chronic patients clearly speaks in favor of the fact that exercise or fitness is one of the more important factors of the overall treatment of back pain, perhaps the most important." With few exceptions, the treatment programs that have been shown to positively impact the natural history have involved patients taking an active rather than a passive role in the recovery process. One study that Dr. Kaegi referred to earlier was conducted by Marianne Bergquist Ullman and Ulf Larsson among Volvo Co. employees. They conducted a randomized clinical trial of three different approaches for acute low back pain complaints. One approach used a back school or educational approach to alleviate some of the fears and biomechanics and exercise. It is also important to note that a visit to the worksite was frequently included, applying the information provided specifically to the work activities of the individuals. The second approach involved standard physical therapy treatment available at the time, and the third group received a placebo treatment of diathermy. Those who received the standard physical therapy and the educational program cited a more rapid relief of symptoms than did subjects receiving the placebo. However, only those receiving the educational approach returned to their normal work activities significantly sooner.

Choler reported on a study involving individuals reporting back problems in one quarter of the population of Gothenburg. After four weeks of symptoms, patients were enrolled in a program where they were provided education focusing on workplace considerations, early graduated exercise and activity, and very judicious use of surgery. This group experienced significantly less long term disability than was found among patients who were not enrolled in the program.

Recently, at the 1989 International Society for the Study of the Lumbar Spine Meeting, in Kyoto, Lidstrom reported on a study, "Work Return and Low Back Pain Disability: Results of a Randomized Study in an Industrial Population". Workers who had been off work and sick-listed for six weeks were randomly assigned to either have their current treatment not interfered with, or to receive a treatment approach somewhat similar to the last one I mentioned. It focused on early activation, progressive activity and exercise, education, and visits to the workplace as opposed to the

standard medical treatment available at the time, and revealed a significant decrease in the amount of time before an individual's return to work (seven weeks less than the control group). Also, patients receiving the special intervention perceived less disability, pain, and subsequent problems.

A concern that some individuals have in returning people to work early, and quite rightly so, relates to safety. There is concern that individuals with back symptoms may worsen their condition or suffer more recurrences. In reviewing the available studies I am aware of no evidence that early activity jeopardizes recovery. If anything, the opposite would appear to be the case.

Mayer has done quite a bit of work with chronic back pain problems, and has shown the benefits of aggressive exercise and education, returning many to more normal lifestyles and work activities. Roland Hazard, in New England, reported in "SPINE" on a duplication of Mayer's approach that was similarly successful.

How we apply treatment may be as important as what we apply. In a study by Wilburn Fordyce, and several others, acute patients were randomly allocated to one of two approaches. One was to let pain be their guide, a common approach for acute problems. The other approach involved giving specific recommendations with specific timelines based on the expected natural history or recovery process. In taking the latter approach, at a six month follow-up, there were fewer symptoms and less disability sited.

There seems to be a relationship between positive expectations or perceptions and the response to back pain. An interesting article, by Thomas, was published in the British Medical Journal in May, 1986. He randomly allocated patients with symptom complaints without verifiable diagnoses, such as back pain, into one of two groups. One group received a positive approach which entailed simply conveying confidence and assurance, the other approach was neutral. With the positive approach, individuals were told that they could expect that their symptoms would be relieved and that their pain would decrease over the next few days, and if a treatment was prescribed that it would be effective. The positive approach resulted in 64% achieving pain relieve by two weeks, compared to only 39% where confidence and assurance was not as clearly conveyed.

Norman Cousins, who wrote Anatomy of an Illness, gave an example of how perceptions and expectations can affect not only our emotional, but also our physical response to situations. The example that he conveyed was one that took place at a large sporting event. There was a group of individuals who became very sick and they were trying to figure out what the commonalty was, what were all these individuals exposed to, that might have made them so ill? They all had something to drink at one particular concession stand and concluded that was the cause of the sickness. So they felt the only responsible thing to do was to get on the loud speaker and announce to the crowd that if anyone had been exposed to something at this concession stand they they might become ill. Well you can imagine what happened. Suddenly, the crowd was a swarming sea of nauseous, faint fans. The first aid rooms were flooded. Ambulances were called from several area hospitals and a number of people were hospitalized. Finally, it was found that they had been mistaken about the concession stand and spontaneously the individuals recovered from their symptoms.

Somewhere along the line, the public's perceptions of back pain, and back pain disability, have gotten very distorted. Nachemson reported that 40% of Swedish government employees surveyed feared a significant risk of chronic back pain. Mark Brown reported on a New York survey asking about major health concerns. What do you think the first concern was? Cancer was number one. Number two was back pain. For all that we know about back pain, its natural history and that it is not life threatening, it should not be number two on a list of general health concerns for the public.

I will just mention very briefly here that there are other factors that seem to be coming into play that affect both the incidence of injury claims and our response to those problems. I have been involved over the past eight years in a large prospective, longitudinal study of risk factors for industrial back pain complaints. A number of other individuals have been involved in this study including Stan Bigos, Alf Nachemson, and Dan Spengler. We examined 3,020 aircraft manufacturing employees and then followed them for approximately four years for reports of back injuries. At the time of our examination we looked at individuals' physical factors. We also gained demographic, psychosocial and worksite information. We found that a history of significant recent back problems was one of the strongest risk indicators for subsequent back injury reports. This is not a great revelation considering that virtually every study that has considered a history of back pain has found the same thing. But the other area that has come out as being important in risk relates to psychosocial factors and perceptions of the workplace.

These factors were more important than the individual physical factors assessed.

There is another prospective longitudinal study that found psychosocial factors associated with back pain reporting among first year nurses. And there have been a number of other studies that have implicated non-physical factors as important in back pain complaints as well.

This investigation was quite interesting: Disability prevention management in workers' compensation claims, a report to the Michigan Department of Labor. Up to a tenfold difference in the claims rate between different employers of the same types of industries was found. Companies that had very low claims rates were more likely to involve employees in problem solving, have open communication systems, share in profitability, and have light duty availability. These were very positive employers. So there seems to be an important role not only for medicine but certainly for the workplace and other groups in helping to curb this problem. Such findings point to the multifaceted nature of industrial illness and injury complaints.

What can we gain from all of this that applies directly to rehabilitation? The realization that there is no magic wand, that there is no passive cure that we can apply to this problem. The best that we can do is to offer good recommendations to the individual to help them help themselves. In addition, there may be measures that can be taken at the workplace to encourage return to work following a back injury report.

There are several treatment guidelines to consider. First, allay fears and misconceptions for all of the reasons that I introduced earlier. Let patients know the good news. They have every reason to be optimistic early on about their chances for a good recovery. They are not alone. They have not been singled out, instead, this is an equal opportunity problem, affecting just about everyone at some point in time. Remember the importance of positive expectations. We also can help patients prepare for the possibility of a recurrence. We need to let them know that recurrences are common but that they can be managed and do not need to be long-lived and certainly do not need to lead to disability.

Empower them with information on self care, such as home application of heat or ice for temporary short-term relief. Give them information on different positions and activities that load and unload the spine so that they can be a little kinder to their backs while they are recovering, or, if they feel an episode of back pain coming on, to keep their symptoms to a minimum. Recommendations should be applied to the patient's particular activities and lifestyle.

Reactivate, rather than rest. Promote the gradual resumption of normal activity. General conditioning activities can be started fairly early because they can place very little load on the spine. As you can see here, even jogging in place puts less load on the discs than the sitting posture does. In addition to warding off deconditioning, there are other benefits of endurance training that can benefit the person recovering from back problems.

A word of caution, there are three areas we see people running into problems quite frequently. They are too much bed rest (too much inactivity prescribed), too much addictive pain medication, and too much surgery without clear indications. These are just three areas to keep in mind. Finally, when possible, we should promote cooperation between the patient and the employer. One way that we, as health care providers, can do this is to avoid statements such as can, or cannot, work. We typically do not have a full appreciation of what is involved in activities at the work site for all of the patients that we see. We need to be more specific with out recommendations regarding restrictions. If we are concerned about prolonged sitting, excessive bending, or lifting, then we need to provide specific recommendations. This will allow the employer, who wants to work with the individual, to do so. We need to keep in mind the importance of protecting the individual's job. Prescribing prolonged time loss from work, and rest, can eventually threaten the individual's livelihood and perhaps their long-term employability.

In summary, while disability is a major problem, there are certainly signs that much can be done to improve upon the present situation that we are faced with. While there is still a great need for good clinical studies to determine the most effective and efficient rehabilitation approaches, at this time, we do know that early intervention and activity yield better results than prolonged rest. We also need to recognize that back pain in industry is a multifaceted problem and the solutions go well beyond just what medicine has to offer. As individuals, health care providers, legislators, and so on, we need to be better informed about this problem and we need better communication and cooperation between all parties involved, particularly those working with the individual affected by back pain. This has been a cornerstone of most programs that have been effective in the past.

Thank you very much for your attention.

MEDICAL AND VOCATIONAL REHABILITATION

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PANELISTS' REMARKS

RALPH GARBER,
DEAN OF SOCIAL WORK,
UNIVERSITY OF TORONTO

As I listened to that resume, I was reminded of Margaret Wiers of the Toronto Star refer to what an editorial writer does. She is the person who waits until the battle is over and then goes down into the field and shoots the wounded. There was no special qualification to be one, all you had to do was just aim straight.

The two speakers did not make the job of editorializing about them very easy, since I agree with a lot of the things they said, if not most of it. That which I did not understand I agree with most. The few areas where I did miss something I thought I would make some comment about. The definition of back pain, in reference to what Dr. Battié, was referring to, reminded me of the World Health Organization definition of the healthy person. It is the one who has not had a complete physical examination. That is a little cynical. I think they were referring to developing countries, but I will not pursue that. The two papers come together in a few aspects, but I would like to deal with them first serially and then maybe, if I can, join them. I was very pleased that Dr Battié referred to the negation of or refusal to accept the "can't work" label, of somebody saying that's what they can't do. My recollection of finding the labelling as being a very strong determiner of outcome was probably exemplified when people were called permanently and totally disabled and then were asked to do rehabilitation, if you can visualize it. Even permanently, partially disabled does not help much. I think we need a new commission to get new names for all of these activities so that we may be able to have a better outcome.

I think the evidence in the back pain study, as well as in Dr. Kaegi's illustrations, of people who are helped because the particular disability is defined and its prognosis is clear and the positive outcome is not necessarily assured but certainly expected, then people almost behave according to what is described for them, rather than the other kind of label. That change is not yet accompanied by the legal form.

I was impressed with the way in which individualized treatment is identified and I would expect that is probably the hallmark of the new kinds of rehabilitation. The absence of that individualization or the generalizing of it, or referring to it only in broad clinical terms rather than what each person's differential description might be, poses the difficulties of the past. Most programs described to us suggest a major shift. There was one word I was waiting for, and it was good not to hear it, and that was the word psychosomatic. That was in relation to back pain but as well as to other things.

Somehow its absence would suggest that the implied has been removed from victimization associated with the term. This meant it is all in your head and all you have to do is just think it out and then you will be able to solve it. By removing that as a labelling characteristic one can then proceed with what is being presented and how the people describe themselves, it was very much appreciated, not hearing the word.

The psychosocial component was referred to by both speakers and I think this is one that might need a little bit more elaboration. It seems to come after, and that is reasonable, if your first need is to identify the medical rehabilitation component. But even with the Voc. rehabilitation I think there was a sentence in it that was, if I can remember it exactly, something about managing personal circumstances that impede rehabilitation. It is a case of looking at the elephant through those particular kinds of glasses. I would think it is managing rehabilitation so that they do not impede the advancement of personal circumstances. The two are so reciprocal that by putting one before the other it suggests that psycho-social is an afterthought. I don't believe it is, I

don't even think that it was meant. But as it always appears in that order it suggests its priority. And perhaps it is in the same vis-à-vis as some vocational rehabilitation was 20 years or 30 years ago, with regard to medical rehabilitation.

As one thought of it, first you had to get them well and then all they had to do was get back to work. Well, then we found that getting them back to work was a whole set of steps that had to be undertaken and voc. rehab. became a very important consideration. Included in it were the psycho-social components of that rehabilitation and as these became more prominent then it became part of the general picture. The ordering, as it was described to me, suggests that it still has a way to go. Everything was very upbeat and I felt very good at the end of this, my own back, I won't say what my ailment is, but anyway, I was glad to be able to be among this mass of population, who are suffering from back pain and now I know what to do about it, if i got anything out of this session, that was good. Of course, there were many other things as well.

The thing that I was interested in does not refer to back pain but rather to those people who are vocationally rehabilitated after some kind of injury. The psychological, psycho-social, mental ailments that some workers experience, those under stress and then who have to be hospitalized for that stress and after being released from hospitalization rarely return to full time employment – the rehabilitation of that whole population becomes a very important one. It probably was not referred to, for whatever reason, but I would be interested in knowing what happens with that group of people whom we see in the streets. I'm not talking about the alcoholic, at this point, I'm talking about all others.

The alcoholic represents a special consideration and a special problem. I know that E.A.P programs address that but not all industry and not all companies have E.A.P programs. I wonder whether there is any association between the E.A.P efforts and the Workers' Comp., in seeing whether they have something to say to each other and perhaps have an inter-relationship before, during and after. There might be some connection between the two.

There was reference to the Oman experience, opening a clinic and having thousands of people or masses people coming, complaining about their back. There was a famous illustration in New Jersey in Newark, about 60 years ago when they opened the first child guidance clinic and there were large numbers of children and their families who appeared. The political leaders of the time were very concerned and wondered why this clinic caused all those problems. They were not there before the clinic opened! It might be that access is not necessarily a negative attribute, nor that it causes back ache nor does it cause any of the other concerns we are addressing. It may also be that there is an un-met need and that the way it can be met may vary over time. The deluge at the beginning does taper off and there are other ways in which this can take its form. I think that the hundred new clinics that are going to be opened by Workers' Comp. will probably have an upsurge of service, and maybe greater then they presently are encountering but that this, too, will probably level off and it will be a way in which access takes a very prominent part of the service that is being provided.

Timeliness was emphasized by both and I think that access and timeliness go together. If it is close enough and available enough then something can happen. The several thoughts about the new ways in which the Workers' Comp. is going to be organized are all very laudatory and I am looking forward to their implementation, not just to January 90 but maybe just a bit down the road, to see what happens when these ideas of the better way of doing it are then carried out and whether they reached their goal. This is not a cynical statement, this is a positive and optimistic one because it is better to do it this way than not. The separations that are being advocated between health care and benefits, between adjudication and vocational rehabilitation, have long been needed. It is highly desirable that they have been implemented. I would like to congratulate the Board and only say nice things in this editorial.

DR. RALPH F. BLOCH,
Ph.D., F.R.C.P.C.
ASSOCIATE PROFESSOR
MCMASTER UNIVERSITY

I was reflecting on how unfair things are. If I had the opportunity to sit on this podium a year ago, I could have revelled in a range of controversy. As it happens, with the new policy, all I can do is congratulate the Compensation Board and join the mutual admiration society and almost sound like a company man, which I am not.

Let me reflect on some of the issues. To me at least, the primary responsibility of the Compensation Board is to restore the quality of life of the injured worker, as closely as possible, to the pre-injury level. Now, in the case of the minor injuries which, after all, constitute the major case load and the major cost.

I see, at least in the traditional models, five hurdles against this restoration.

Firstly, there are the myths and mythologies, the belief systems and misconceptions that the several previous speakers have alluded to. Amongst them the belief that treatments have to be done to me, do unto me.

The second hurdle is the vested interest of, what I would have called in my radical student days, the medical industrial complex, and these include another unholy trinity, rest, heat and narcotics, and the great satan of unnecessary surgery.

The third hurdle is the difficulties, or have been, the difficulties of getting through the big machinery of the Compensation Board – I have to be a little bit controversial.

The fourth hurdle is the unresponsiveness of the employer in getting people back to work before, as many employers required, "they are completely recovered". And for a physician to write down that this patient has completely recovered is often very difficult.

Another hurdle, probably less important, is the attitude of some unions who see the seniority issue as much more important than making adaptations, even on a temporary nature, for workers. The new policy has addressed most of these concerns. With each of those I still hope that my pessimism is going to be wrong.

The first one relates to the medical industrial complex. There is a fear that a lot of "get rich quick" companies will jump on the band wagon to set up community clinics where they will do more of the same for more money. I think it is going to be crucial that there will be standards, that there will be an audit and an accreditation system for such clinics that will go on continuously.

There also needs to be something done about referral patterns from family physicians and from factories where there are several ways that economic factors distort these referral patterns. I am referring, for example, to the G-code billing, which induces physicians not to make use of effective treatment modalities. But hopefully that can be overcome.

The decentralization, if it is managed carefully, and we will learn more tomorrow how it will be managed, should take care of much of the problems with a big bureaucracy, from the point of view of the grass roots when the worker is trying to get his case looked at.

I am a bit concerned that the transition period maybe chaotic. The position of the employer may also need to be looked at, and how can they be encouraged to comply, are there standards and will they be monitoring?

These are about the only concerns I have and again I would like to congratulate the Board for being forward looking and have the courage to innovate.

REMARKS BY CLIFFORD PILKEY

Former President,
Ontario Federation of Labour

Wednesday, September 20, 1989
Metro Convention Centre
Toronto, Ontario

This evening, on the seventy-fifth anniversary of the Workers' Compensation Board, I would like to deal principally with our future and our past. In a nut shell, I want to talk to you about our future as Canadians. The change and choices that future most certainly brings and the values we apply when confronting these twin certainties.

More often than not, change has been depicted as benign or a positive thing. In the Canadian context Sir Wilfred Laurier, perhaps, best captured this attitude at the turn of the century when he pronounced that: "The twentieth century belongs to Canada." Given the vast wealth that this land offers, there is no reason not to be optimistic.

It would be difficult to define that which contributes to this wealth. I think, it is fair to say, that we take as much pride in the diversity of our people, as we do in the diversity of our geographies and the natural resources that they provide. For ours is a heritage of strong regional roots, and rich cultural tapestry, wide open farm lands, and vast timber lands. Beyond this, the definition of all that we possess or all that we are becomes a little more elusive, but let me try.

In the eyes of the world we have been seen and depicted as the land of great opportunity. Some futurists predict that we will remain an island of privilege and relative comfort in the next century, because of the expanse of our natural resources.

In a social context we are revered as a nation that upholds justice, compassion, fairness and human dignity. In short, we uphold a belief in the equality of all our citizens.

This is the reputation we have built for ourselves. This is what we have come to value as people. This is what twenty-six million citizens have reached a consensus on.

Consequently these values have shown themselves in a variety of ways. Not the least of which is partly known as our social safety net: universal health care, public education, income maintenance programs, (including Workers' Compensation), affordable housing, regional equalization payments, and agricultural subsidies, all assure a minimum quality of life for Canadians.

With similar intentions we offer government grants to help provide businessmen with equal opportunities. We have adopted a policy of encouraging a cultural mosaic, rather than moulding our citizens to one group's version of an ideal identity.

Recently we have also begun to move closer to a truer democracy by fostering tripartite or bipartite bodies that advise governments, their ministries and institutions on a variety of issues.

Here, I would like to digress or expand on this point, because this is an area in which I devoted most of my career.

This is providing working men and women with equal say in our own destinies. To establish the value of this process, I need look no further than the Workers' Compensation Board.

In this vast institution workers enjoy an important voice in the new external Board of Directors of the WCB, the Workers' Compensation Appeals Tribunal, the Industrial Disease Standards Panel, the Office of the Workers' Advisor, the Occupational Health and Safety Education Authority, and by extension the Workers' Health and Safety Centre.

I might add the tripartite agreement of the Workplace Hazardous Material Information System and a newly struck joint steering committee on hazardous substances, are two other points in that case.

At the workplace level a similar approach is afoot. In a number of instances, through worker participation, the working environment is experiencing real and positive change. My own survey of Ontario workplaces tell me this much.

At the St. Thomas, Ford Motor Assembly plant workers have helped pioneer a comprehensive ergonomics program where over one hundred

ergonomic changes have been made, thus saving many wrists and hands from strains and sprains. Nurses and services workers at the Brampton Peel Memorial Hospital have helped institute a program that guards against back injury. In Ontario mines highly trained, union-appointed, company-paid, full-time worker representatives, with a right to stop unsafe work, have already proved themselves successful. In fact, they have been so successful, employer and labour representatives of the Mines Legislative Review Committee, agreed, last September, to prepare new regulations that would legislate worker safety representatives.

Finally, in the area of training, worker participation has also been an unqualified success. Through the Workers' Health and Safety Centre, worker instructor/trainers have trained workers along side their managers in occupational health and safety, and then, in turn, instilled them both with the capacity to deliver the training to fellow workers. In the Workers' Centres brief history, this type of negotiated training has been employed, for example in the: pulp and paper, energy and chemical, steel and auto industries; in addition to public sector workplaces like: hospitals, schools, and correctional institutes. Even the Ontario Ministry of Labour adopted this principle of workers training workers when they undertook to train their inspectors in a designated deadly substance training program. Of this training then Deputy Minister of Labour, Glen Thompson, was reported to claim that it was the highlight of his year.

For all of these inroads we are grateful. Although, I must say while it is not my aim to minimize them, these successes only mark a beginning. More often then not, we are yet treated as junior partners or past over altogether. Much like the Polish experience, Ontario labour is consulted in bad times but ignored, to a great extent, in the good times. If there is to be equal participation and continuous progress then the consultive process must be observed at all times. In keeping with the Canadian values there must be full and equal participation between our economies: two partners.

To get back to my point, these are the social and political programs and initiatives that manifest much of what we hold dear as Canadians. In a similar manner, we have undertaken a number of programs aimed at the preservation of our natural resources: reforestation efforts, sophisticated farm techniques and wildlife conservation are but a few.

That these measures enjoy widespread support is virtually indisputable. Take a look at the polls and they will tell you that the environment is Canada's number one concern. If we step back from all of this and view things in a more critical light, I do not think I need to tell those of you gathered here tonight, what an effort it is to keep these programs and initiatives in balance. For it is as difficult to balance the competing interests and systems of a society, as it is to balance our environmental systems. Further, let those systems get out of kilter and we do it at our own peril.

Often we threaten our own existence. When it comes to the environment, at least, I do not think I'm being too dramatic. With the twentieth century fast closing we face the brutal reality that the very change we embrace is now threatening those resources we thought the key to our advancement.

I am also not telling you anything new, when I tell you that our timber lands, oil reserves, and fisheries are dwindling dangerously. That farms are increasingly being consumed by heat waves and drought. Or that the conditions of these last two demonstrate what is popularly know as the "greenhouse effect".

If we next take a closer look at recent changes to the social and political landscape the question arises, is this landscape following the example of our environment? In the name of deficit reduction, free trade and the free play of market forces, are we also allowing a gradual erosion of the quality of life, that is as distinctively Canadian as our natural resources? Are we allowing a small segment of our society, who place inordinate value in marketplace economics, to unduly alter the balance struck by our sociopolitical programs? Just examine our recent record. Last spring witnessed dramatically increased taxes on old age security and family allowances, benefits formerly described by the Federal Government as part of a sacred trust. At the same time the government postponed indefinitely their '88 election promise of a four billion dollar national child care program. This coming year they plan to reduce federal monies paid to provinces for medi-care and post secondary education by one per cent. They will pull out of the unemployment insurance plan and even anticipate redefining eligibility for this benefit. In the wake of Canada's *U.S. Free Trade Agreement* and the U.S. repatriation of branch plant jobs, this last measure is a real blow. The unemployment insurance plan may not go bankrupt but people will. What is more, the growing alternative to unemployment is low paying, dead end jobs, what some refer to as the "McDonaldization" of the work force.

The result is 17 per cent of our nation's population or some four and a half million people are living below

the poverty line. A full three per cent more than the United States, a country rarely noted for its generosity. Meantime, the incomes of managerial employees have also increased many times faster than those of hourly employees. So, the gap widens between the haves and the have nots – much wider; we may one day be faced with a New York City-style confrontation.

May I remind you, that this year also marks the two hundredth anniversary of the French Revolution. (Just a friendly reminder, I am not calling for the reintroduction of capital punishment nor the guillotine.) I should also add that the pursuit of decent wages is not only the workplace concern we are faced with. In this age of technology and chemical advancement, workers' lives and well-being are being threatened as never before. There are some that would argue rising deaths and injuries are only tied to an increased blue collar workforce. Facts are, workers' deaths, disease and injuries are outstripping any growth of the workforce. At this juncture, then, we must also ask ourselves, are we content to allow this erosion to continue into the nineties and the twenty-first century? Or are we committed to shoring up this erosion and then further enhancing the quality of life for Canadians on all fronts.

I would suggest that our future may not be as bleak as some would have us think. But our hope, I would further suggest, is grounded in the adherence to the traditional values, we as an entire society, have come to agree upon. These we must use as a yardstick for future changes and choices. When it comes to the environment, for instance, one would have to conclude that we, and the world for that matter, are at least attempting a cleaner earth through a new series of programs and initiatives.

Here in Ontario the Provincial Government has introduced a pollution abatement program called MISA. At the municipal level blue box recycling campaigns have taken off with a vengeance. The Federal Government has enacted environment protection legislation. Stateside even George Bush has introduced a clean air bill aimed at reducing the greenhouse effect. Finally, a world-wide ban of ozone eating chemicals is slated for the not-to-distant future.

The introduction of Bill 208, an act to amend our Occupational Health and Safety Bill, is yet another initiative in which I hold a great deal of hope. Despite its shortcomings, it nevertheless, represents another great step forward. In my way of thinking, it may actually represent another mechanism for positive change in our workplaces.

In doing so it may even act to reduce the great costs that both Ontario employers and workers bear. In our province alone, we lost one point four billion dollars to the Ontario economy in 1987 in direct workers' compensation payments, which then translated into six to 10 billion dollars lost to the economy in indirect costs, like production. Seven million days were also lost to the Canadian economy in 1987 due to occupation injuries, illness and disease. Seven times more than lost to labour disputes.

If we care about the economy, surely these costs are unacceptable. If we care about people, surely the human costs are more unacceptable. Last year over three hundred workers were killed on the job as a result of workplace accidents. Another half million suffered varying degrees of injury. I do not think I need to expand on the pain and loss involved in just one of these tragedies.

If for no other reason than human compassion, frequency of incidents of deaths, injuries and illness must be dramatically reduced in the future. I might add, over the past few months Bill 208 has been the target for a small minority of detractors. I continue to hold on to the belief that the majority will eventually back the kind of consensus building this Bill affords. Surely those who believe in cooperative workplace endeavours, must agree that equal joint involvement in workplace safety is an important and necessary initiative.

In addition to these initiatives, there are yet others, that will also necessarily effect change: The Canada – U.S. Free Trade deal, an amended *Workers' Compensation Act*, and pay equity legislation are among the few that spring to mind. How well these initiatives will be judged will ultimately depend on how each contributes to the quality of Canadian living. If they fail to meet the test, I assure you, our environment will not be the only thing that heats up. However, if they succeed then the twenty-first century truly belongs to Canada. Thank you very much.

ORGANIZATIONAL CHANGE IN LARGE PUBLIC AGENCIES

ORGANIZATIONAL CHANGE AT THE WCB

Notes for remarks by Alan Wolfson, Vice-Chairman of Administration and President, Workers' Compensation Board

Thursday, September 21, 1989
Metro Convention Centre
Toronto, Ontario

The past three years have witnessed a wholesale transformation at the WCB. Those within the organization have a fairly good appreciation of what has gone on; those outside may not be as fully aware of the magnitude and importance of the changes.

What I would like to do this morning is to describe briefly the nature of the organizational overhaul that has taken place and the process by which it was accomplished. I would then like to speculate in a preliminary way on some of the lessons that might be drawn from the WCB's experience for organizational change in other large corporations, both public and private.

First let me give you a sense of the size of the problem we faced some three years ago by placing it in context. The Board is a much larger institution than most people realize. We process almost half a million new claims a year. There are over one hundred and twenty five thousand permanent pensioners on our rolls. Because there is no limitation period within our *Act*, we maintain records on about 20 million claims. Each year, we collect about two and a half billion dollars in revenues from about 200,000 Ontario employers. We have about four and a half billion dollars worth of assets to invest. We have over eleven billion dollars worth of liabilities to provide funding for. We employ almost 5,000 staff and we deal with a host of the most complex legal and medical questions imaginable. We are, in short, a very large and complex institution.

In addition, the Workers' Compensation Board is a venerable institution. As you know it has been in existence for 75 years. And while it has grown considerably over the years, it has traditions that are firm and stable. There is a great feeling of community within the organization and a strong sense of history. However, while the external and political environment of workers' compensation changed dramatically in the 1970s and early 1980s, the Board's structure remained basically intact. Accordingly, observers both inside and outside the organization recognized a need for change to respond to the new realities. While there may not have been consensus on the nature of the changes required, there was, I think, fairly general agreement that a major overhaul of the organizational structure and its operation was indicated.

The first step in our reorganization was a change in the superstructure. The general governance of the WCB was very significantly reordered by legislative changes taking effect in 1985. Most notably, Bill 101 created a new and independent Board of Directors with active participation of business and labour representatives, as well as an independent appeals tribunal, an industrial disease standards panel and new offices of worker and employer advisors. These changes did much in themselves to create a more open relationship between the Board and its client groups.

This openness has been reinforced by a much more participative interaction between the Board and its stakeholders. Over the past three years we have seen a very significant increase in the level of consultation undertaken by the Board as part of the process of policy and program development.

Within the organization itself, the first major change involved a reconfiguration of our divisional structure. Prior to 1986, the structure of the Board was very unwieldy, with considerable power concentrated in the heads of about a dozen different divisions, each of them reporting directly to the senior executive. As a result, effective coordination and control was compromised and the separate divisions operated more or less independently, isolated one from the other, each developing its own policies and controlling its own resources and activities. The inevitable result was fragmentation of service with numerous delays for our clients, both injured workers and employers, as files were moved between the various divisions. In addition, there were sig-

nificant functional gaps in some areas and redundancies in others. The most notable gap was in the area of policy development. Here it was evident that the Board's ability to respond to the emerging challenges of a highly visible and politicized environment was simply not adequate.

To address these various problems, a corporate restructuring was undertaken with four new divisions emerging out of the previous dozen. The heads of these new divisions, the vice-presidents, now comprise with me the senior management team of the corporation.

The streamlined divisional structure reflected our interest in integrating activities where appropriate. Accordingly, a single division covering all of client services was created. A second division of policy and specialized services was established to provide the needed capacity for developing operational policies and guidelines as well as certain other specialized functions. The various key elements of corporate support services were combined into a single division, including computer services, human resources, finance and administration, etc. Finally a division of strategic policy was created to provide much-needed support for longer-range executive decision-making.

Within this new general structure, we then proceeded to completely overhaul the organizational units themselves. The transformation of the WCB was an enormous undertaking. Almost every part of the organization was directly involved. Perhaps the most remarkable effect of the restructuring was the decentralization of service delivery. Within a very short timespan, about 18 months, one third of the Board's claim volume was transferred from head office to four newly-established regional offices.

This very dramatic change in the way in which the Board provides service was designed to enhance our relations with our major clients, namely injured workers and their employers. There have been numerous illustrations of decentralization in the private sector over recent years, but I suspect few were as significant in their impact and accomplished as quickly as the change at the board. In 1986, eighty-five per cent of our volume was handled at head office in Toronto, with 15 per cent in two regional offices. Two years later the Board's activity was about evenly split between regional and the head office operations.

Concurrent with this very radical change was a complete reordering of service delivery at head office itself. The old structure with separate organizational divisions for functions such as claims adjudication, health care benefits, vocational rehabilitation, medical services, records management, etc. was dissolved. New integrated service units were created bringing these various functions together to provide more efficient, effective and personalized services for our clients. The catchment areas of these units were defined geographically to ensure more continuity of service and to focus attention on the important role of employers in the rehabilitation and re-employment processes. In addition, a special unit to deal with the unique problems of the construction industry was created.

As a result of the reorganization, about 3,000 Board staff found themselves either in entirely new jobs or performing previous functions in a new setting, with new reporting relationships, colleagues and physical settings. In other words, about three quarters of our employees had significant changes to their work environments to deal with as part of the organizational transformation.

The effect was most pronounced at the level of management. By the end of 1988 over 90 per cent of Board executives had less than two years' experience in their positions. Moreover, a new corporate culture became evident in the composition of the Board's management. Let me give you an example. When I arrived at the Board in the fall of 1986, there was one woman in the top 60 positions. Now women comprise about 30 per cent of Board executives at the level of director or above. Furthermore, at the middle management levels, female candidates have been successful in almost 50 per cent of recent competitions.

While the most dramatic changes to the organization may be evident in its structure and staffing, major changes have also taken place in the support environment. The physical aspect of the Board's offices now presents an entirely new image to our clients and a new workplace for our staff. Major innovations have been made in our computer and electronic office systems. And the Board is now pioneering the development of new technologies such as an imaging system which can allow us to become the first major paperless operation in Canada.

While all this was going on, the policy and program environment of the Board was hardly stable and quiescent. In fact, the changes on this front rivalled those in the organizational area. Major policy initiatives were undertaken in such areas as the compensation for industrial disease, chronic pain disorder, a revision to the vocational rehabilitation supplement policy, the legal interpretation of the key phrase "injury by accident" that establishes entitlement to compensation under our *Act*, and the payment of interest on delayed awards.

The most important change in the policy environment was, however, the enactment of Bill 162. This legislation represents perhaps the most significant legislative reform of the *Act* since its beginnings 75 years ago. Board staff were, of course, involved in assisting the Ministry in understanding the potential implications of various formulations of statutory changes.

On the program side, as soon as the new organizational structure was established, and well before it had stabilized, the Board was already into major strategic developments. As you heard yesterday, these began with the vocational and medical rehabilitation strategies which, in each case, represent a major rethinking of the Board's approach to ensuring that injured workers are rehabilitated in a timely and effective way. We have also developed a claims adjudication strategy to deal with long-standing problems at the core of our business, namely the adjudication of roughly half a million claims a year. We believe that this strategy will create better and speedier decision-making, but to accomplish it we need to make significant changes in the recruitment, training, deployment and activities of about 800 staff involved in adjudicative functions. The pilot project for this strategy commenced several weeks ago in one of our integrated service units, and, if successful, we will extend implementation Board-wide next year. We are also currently embarking on a new revenue strategy which will have major impacts on the way in which the Board assesses and collects money from employers.

I could go on with other developments of significance at the Board, but in the interests of time I will not. I think what I have already described gives you a flavour of the level of organizational activity and dynamism that we have witnessed over the past three years. Suffice it to say that an enormous amount has been accomplished. While Board management and staff are not accustomed to hear praise for their efforts, either in the press or in the Legislature, I believe there is much about which we can be justly proud and that in the coming months and years the community as a whole will begin to perceive the results of the major changes that have taken place.

Turning now to process issues, I would like to focus on several specific features of the way in which organizational change was managed, rather than give you a comprehensive overview of the various stages we went through. I simply do not have time this morning to do a full description.

I would like to begin by pointing out what may be a curious anomaly that we encountered during the course of our reorganization. At the culmination of the process, at the end of 1988, the Board promulgated its mission statement. This statement laid out four basic principles or goals which should guide the organization in its work over the next decade. These goals are as follows:

1. Service excellence;
2. Financial soundness;
3. Public understanding; and
4. Responsible administration.

Let me explain briefly what we mean by each of these.

Excellence in the provision of service to the Board's clients has several dimensions. First and foremost is the need to provide fair and speedy decisions regarding entitlements and obligations flowing out of the *Workers' Compensation Act*. Second, there is the need to mount effective programs to provide medical and vocational rehabilitation. Third, the Board needs to ensure that the health and safety education programs it supports and the incentive programs it operates are effective in reducing accident and disease rates.

On the financial side the Board has an obligation to ensure that the system is adequately funded and financially viable over the long term. To accomplish this, assessments must be set at an appropriate level and must be collected effectively and our assets should be invested in a way which maximizes the long run rate of return within the constraints of financial prudence.

Our third goal relates to the need for communication. Even an effective organization which is financially sound will not achieve its goals if there is not appreciation of its efforts by the client groups most affected. Without general understanding and acceptance, our system will become highly adversarial and non-compliant.

The final component in the mission statement relates to the requirement to organize our administrative operations effectively and economically. This not only involves budgetary control but also the development of a response capability in a constantly changing environment. This kind of responsiveness is ensured only through the maintenance and development of Board resources, particularly our staff.

The articulation of this mission statement reflected the emergence of a new corporate culture at the WCB. But, as I mentioned, it came only at the end of our process of change. It may seem strange to outside observers and perhaps also to people within the organization that a mission statement should be issued after the transformation has been largely completed, rather than before the program of organizational change commenced, laying out a blueprint and a strategic plan.

In fact, when I arrived at the WCB, many of the staff at the Board expected and sought from me a statement of goals, objectives and plans for the organization. They knew that major change was imminent and they understandably believed that the process of transformation would not get underway without fairly clear ideas about how it was going to take place and where it was going to end up. Everybody seemed to believe that the master plan was hidden in my inside pocket and that failure to reveal it was an indication of a secretiveness that was unwelcome, to say the least.

This feeling was not unnatural in the context of a generalized perception that those in senior management positions at the Board were either unwilling or unable to communicate to staff about major changes affecting their working lives. I believe that this perception, shared by some staff members, may have emerged from historical experience with a corporate culture that was not as open as it might have been. In any event, staff concerns about communication proved to be very difficult to eliminate despite a barrage of memoranda and bulletins, as well as repeated assurances that there was nothing more to be told beyond what had already been communicated.

In this curious case truth was no defence. The fact of the matter was that there was no master plan when we set out on our program of transformation. It was not as if we had no sense of direction at all. Clearly, there were some very broad general notions of systemic problems that needed to be addressed and there were specific concerns about elements in the corporate structure and culture that made the organization less efficient, effective and flexible than it needed to be. But there was relatively little clarity of vision on what we wanted to put in place and no detailed planning for the process of accomplishing it.

Rather our ideas on these subjects grew in the doing, the various layers of the onion were revealed as we peeled them, and it was not until the process was more or less complete that we were able to articulate clearly what it was all about in the form of our mission statement and statements of purpose in our strategy documents.

This reflects a process which was in some ways extraordinary. It had two key features. First, although the process was viewed by many within the organization as controlled in a highly centralized fashion out of my office, in fact, it was very participatory. This was in line with a general change in our corporate culture towards more openness, particularly in dealing with client groups. However, the first efforts at establishing a more open process occurred internally as part of our reorganization. Literally hundreds of Board staff were involved in the various project teams, working groups, task forces, and implementation committees that were established at various stages. The organization found talent and energy throughout its ranks that was mobilized in a marvellously collective way.

By virtue of this participatory process, the essential underpinnings of our organizational design emerged more as a mosaic than a blueprint. Various perspectives were woven together throughout the process with the result that a cohesive fabric emerged only at the end.

A second key element in the process was speed. A great economist and former teacher of mine, Kenneth Boulding, used to define participatory democracy as consensus by exhaustion. He was, of course, referring to the damaging length of time that the participatory process generally takes. There is no doubt that collective decision making is resource intensive and therefore exhausting, and there is no doubt that we may have exhausted the staff at the Board in the process of effecting our transformation. But we exhausted them by working very hard and very fast rather than by extending the process interminably.

In fact, we proceeded at an almost incredible rate. At a crucial stage in the process I conferred with a friend who was a senior member of the consulting profession and had experienced a number of large private sector reorganizations in the past. This was at a juncture when I was just about to redefine over 200 of the most senior positions in head office and establish two entirely new streams of management, line management and staff management streams. As I explained to him, the process I was contemplating would take six weeks from start to finish and no one would lose employment in the organization as a result. He very kindly advised me that I was nuts. He pointed out that when major corporations in the private sector undergo this kind of transformation a number of things generally happen. A number of senior executives are dismissed. While the number might vary from case to case, it would never comprise the whole senior management structure. Second, the process might take between six and 12 months to accomplish from start to finish.

Third, to the extent possible the organization would be put on a low level of activity, working off inventories and the like, while the transformation took place. His conclusion therefore was that my proposal, one that involved many times the number of managers and executives, to be accomplished in a fraction of the time, with nobody dismissed, and

continuing to operate at full tilt as was required, was simply not feasible.

My friend was right, of course, except that in the end we did accomplish it. And my own view was that the key to accomplishing the change was in its speed. At every turn there were instances where the same kind of acceleration was required as was illustrated in the overhaul of the management structure. If we had attempted to transform the organization in five years rather than 18 months, I do not believe that we could have sustained the energy and the dynamism to get the job done. In addition, it is not clear that our client groups and political masters would have tolerated a more lengthy process.

This, I think, was one of the key lessons to be drawn from our experience. Delay and indecision are the enemies of successful organizational change. More time may buy greater clarity of vision and more opportunity to communicate plans and ideas, but the major risk implicit in a deliberate process is that the momentum for organizational change may be lost.

This is a paradox in the transformation of organizations. The risks from speed are great, but so are the risks from proceeding at a deliberate pace. In each context, the task of those initiating and conducting organizational change is to weigh and balance these different risks.

Ultimately the decision on which risk to take is dependent upon the qualities of the people within the organization, their capacity to change and their capacity to maintain the process of change. An organization like the Board is not about structures or policies or programs or computer systems, it is about people. Almost any kind of transformation is feasible if the people within an organization believe in the changes that are being undertaken and the necessity for them and if they have confidence that the changes will be implemented with sensitivity and compassion. Certainly this kind of acceptance will be assisted by communicating a clear and convincing vision. Our process of organizational change was impaired by our inability to articulate this vision in advance, not because we did not want to but because we did not know. But to have waited until we knew would have been to wait too long.

Despite this impediment, I believe that the transformation of the Workers' Compensation Board has been very successful. While it is largely complete in a structural sense, it will clearly take more time before the strategies, policies and programs have a significant effect on the way the Board operates and more time still before the change in corporate culture is fully absorbed. Clearly organizational imperfections remain. We have not dotted the last 'i' or crossed the last 't' in the organizational blueprint. And in fact there may be areas where some of the architecture itself may need to be redesigned. Speed of change increases the chance of error and we must be active in recognizing mistakes and moving to correct them without defensiveness. But I believe strongly that the basic structure and culture of the Board is now on a firm foundation.

Over the coming months and years the challenge will be a new one. The enormous reality of implementing a major new piece of legislation and putting our strategies into place will absorb much of the organization's energy and attention. But the underlying agenda will shift from an agenda of change to one of stabilization and renewal. While our process of transformation has been successful, it has been exhausting, and the restoration of our capacity, particularly our people, is now our top priority. I am confident that at the end of a further stage of growth, the Workers' Compensation Board will be even better positioned and equipped to fulfil its mission.

Thank you.

RAPID CHANGE IN LARGE ORGANIZATIONS

Notes for remarks by Professor Jeffrey Gandz, School of Business Administration
University of Western Ontario

Thursday, September 21, 1989
Metro Convention Centre
Toronto, Ontario

This case study is of the Workers' Compensation Board and the change that it is going through. My emphasis is on the present, because as I listen to Alan Wolfson, I am reminded of a little passage from the Herman Wouk book The Winds of War. It is when Pug Henry is visiting Winston Churchill at the start of the bombardment of London, England and the bombs are falling all around and everybody is uptight, and Pug walks in, and the first issue that Winston Churchill raises with him, this is in 1941, "Will there be sufficient landing craft to invade Normandy in 1944 or 1945?" And of course what Pug Henry deals with is an interesting issue in leadership, which is the leader is very much thinking out there beyond where things actually are. So if Alan will accept this slight criticism of his description of where we are, now he must also take it with a compliment that he knows where he wants to be. With the help of Martha Peleschuk, a graduate student at Western, we interviewed over one hundred people within the Board, and outside the Board in various constituent groups and we asked them to talk to us about the recent changes at the WCB, about the process of change, as well as the materiality of change. Let me make it clear that what we were inviting people to do, was complain. That is important. In fact we were liberating a whole lot of feelings about the way in which change has occurred.

We have to be very, very careful in trying to understand the kind of data that we have about the organization. It's perceptual data, it is the way people think, it's the way people feel, it may have no basis in reality, and the reality check needs to be done. So what I am going to try to do is make some comments about organizational change in general and then move to the specific case of the Workers' Compensation Board.

We mentioned something about organizational change. Around about 1970, I had the pleasure, the privilege of going to hear Alvin Toffler speak on organizational change. It was the most depressing six hundred dollars that I ever spent in my life, because what Toffler said to me is, "you're going to go crazy, the pace of change is increasing so rapidly, you are not going to be able to cope. Every transistor you've got up there is going to blow, your only opportunity, your only chance is to slow things down, you've got to kind of maroon yourself on a desert island, surround yourself with the things you are comfortable with; your record albums, your favourite books, a teddy bear from when you were a child, and if you keep these familiar things around you, you will be able to maintain some semblance of stability and be able to survive".

This initial prognostication has not, in my view, been borne out by more recent developments. We can thrive on change, we can love it, in fact we can get to adjust quite well to the notion that life in organizations which used to be long periods of stability, interrupted by short periods of traumatic change is quite now likely to be long periods of change interrupted by occasional and rather boring bouts of stability. But what is clear, is that the first change effort, when one takes a highly stable embedded culture and says we are going to change it, produces trauma.

There are a number of reasons for this; the first I suspect has to do with the fundamental nature of managing change in an organization. It is actually summarized in an equation. This is the managerial change equivalent of Einstein's $E=mc^2$. It is the fundamental change equation; it says AY/c=TY/c-ISU. The AY/c means the actual yield from any change. TY/c, means the theoretical yield from that change. And what does ISU mean? Impiementation screw-up! It is essentially all of the things that can possibly go wrong with the best laid plans of mice and men, when in fact they are laid out. The reality is that every organization that I have ever been involved with in change, has had

implementation problems in the execution of the change.

Of course this is compounded by a bit of a problem when you are not exactly sure of where you are going in the first place. And as Alan pointed out quite correctly: at the WCB there was general direction, but not exactly a detailed route laid out. I would point out of course that the greatest voyages of discovery have often been made without detailed plans. It was said of Christopher Columbus that he set out without knowing where he was going. When he got there he did not know where he was, and when he got back, he had no idea of where he'd been. And in reference to your unfunded liability, he did it all on borrowed money as well.

So we should not be put off on the question of voyages of discovery, by not exactly knowing in detail where we are going. We always know in change that we are going to have implementation problems somewhere along the line because change is threatening, for a whole lot of reasons. I am going to try to summarize the reasons that we have resistance to change, because I am going to refer to some of these as we go through. They tend to be six categories.

First: People don't understand what is being done, and why it's being done. We simply don't communicate as well as we think we do. I'll make the obvious point, that we are now dealing with a rock music video generation, whose attention span to any subject is about eight-and-a-half minutes, that's the average length of time between television commercials; who are not oriented to the written word, who don't watch videos unless they contain lights, whistles, noise and so on and so forth. That is a tremendous problem in communicating: a tremendous problem in simply getting the message clear enough, loud enough, often enough to break through the noise level that all of us experience. And if people don't understand what is going on, they tend to resist any change.

Second: It comes as an enormous shock to senior executives, that there are actually people in an organization who think that the changes are somewhat misguided. They don't actually agree that the changes make any sense. That happens occasionally.

Third: Resistance happens when we dislocate people as they experience some personal loss. They may lose status, they may lose authority, they may lose an office that they like, they may lose working hours, they may lose something that was important to them in a work or a social context, and they don't like that.

Fourth: Quite often these days, people are simply overloaded. You ask them to do new things or to behave in different ways and they say "yes, absolutely, I agree, good idea," and you come back three months later and you say, "Why isn't it done?" And they say, "Well, I've just been doing my job, I've been so busy". We did a little experiment once. We took an empty desk in the executive offices of a bank and for a two-week period we piled on that desk every request for change that the bank manager got in that two-week period. Guess what? They amounted to nearly three weeks of his time that we wanted out of a two-week period. So you are to go on this course to learn how to do this better; good idea. Go on to Lotus 123 program so that you can be literate; good idea. Learn how to do a performance appraisal properly; good idea. All of these things require time and of course what we didn't do was relieve him of any of his current responsibilities to carry on doing his job. And when that happens, people tend to resist change.

Fifth: We also find that we ask people to do things they don't feel competent to do. So you can say to somebody "we want you to take responsibility for this, or have authority to do that", and they say, "I don't know how to do that." By the way they may never say, "I don't know how to do that." They may simply do not do it because they don't want to take on the responsibility, their concern is that they may mess it up.

Finally: Sometimes we find that the things that we ask people to do, they disagree upon in principle. They think that they are morally wrong. "We don't think we should do that within this organization."

So what we find in general, when we try to manage large scale change, is that we encounter people who will resist that change for many, many reasons. And, of course, what we know intuitively is that we have to take certain approaches to managing this, to try to build the support and minimize the resistance. So we educate, we inform, we consult, we sell, we co-opt, we negotiate, we do all of those things.

Occasionally we coerce as well, and we say, "Hey, we are going to do it, we are going to do it now because it has to be done quickly." And of course when we coerce, what we get is a minimization of resistance if they don't have power to resist but a great deal of resentment that builds up as a result of having been coerced. So it should come as absolutely no surprise that in any rapid and wholesale change we will have people who feel poorly about what has taken place.

Which brings us then to what we found in our look at the WCB, and again, I want to emphasize we went in at a point where change is just beginning to unfold. A lot of the things that Alan talks about, the

strategies and the approaches are really being announced as we go through, and are being implemented. So, it's a point in time.

What did we see? This was a massive, massive amount of change. I don't think that I have seen as much change compressed in an organization as I have at the Workers' Compensation Board. There were structural changes, reorganizations of basic functions, totally new strategies, a whole new approach to budgeting that was really quite radical within the organization. New policy generation and implementation processes and major technological change. Each one of these would have been a major and dramatic change in and of itself. For them all to occur simultaneously, is really an unusual situation — rapidly executed, very fast, very compressed, without an overall change plan. There was a mission and we understood in general where the Board was heading, and they were pretty excited by some of the elements of vision that they heard. It's really exciting to have decentralization and so on. But there really was no plan, no road map for change that people could look at and say, "here's where we are, here's where we've been, here's where we need to go."

It was also done with very limited resources. This was done essentially on stable administrative budgets, and indeed there were some cut-backs in some key areas. The centralized human resource and training areas were cut back during this process, although Alan tells me that there were some redistributions particularly of the training resources. But essentially it was done without throwing people and money at it.

Let me perhaps indicate how much of a change this was, a couple of quotations of the WCB before the change. "The departments were fiefdoms, each headed by its own little lord. They were located on separate floors in the building and they operated entirely independently of each other, even adjudicators and counsellors working on the same case would *only communicate* by the formal inter-office mail system. Executive directors who ruled in the fiefdom guarded their territories fiercely. They were very secretive about operations, management committee meetings were a farce."

This was some description of what things were like previously. There is something else, which was a description of how tight this culture was. "We had a real family. The people cared about the injured workers, and they cared about each other. We spent weekends together and knew each other's kids and husbands and wives, staff association events were incredible, spring dances and baseball games were sold out the day tickets went on sale, and our Christmas party for the kids was always a huge success." Lots of people married Board people, and weddings were Board affairs, and so on and so forth.

One gets the sense then, of a strong family orientation about to be upset. In fact, what we found when we talked with people, listened to them, was that there was a widespread recognition of the need for change. In our interviews, we hardly came across a single person who didn't say "we really needed to change". There were things that needed to be done that were different. We found that, for the most part, there was widespread and pretty enthusiastic acceptance of most of the technological, structural client service and policy changes that have been put through to the Board, the things that Alan has talked about.

So people saw the need for change and they thought generally that the change was in the right direction. By the way, that first point is critical. There is an old joke in the change business. It says, "How many psychologists does it take to change a light bulb?" It is only one, because the light has got to want to change! It is the critical ingredient to getting anything really going in that process, it's necessary.

But people were experiencing difficulties with the articulation of the goals and the vision and in particular the executive of the Board had not managed to articulate and operationalize goals in a way that people felt they could measure. So, in fact, what people were saying to us was, "OK, I understand that we have to give better service, but what does that mean, what does that translate into, what are the trade offs we need to make, how do we do it? So, is it we need to reduce this, increase this by so much and so forth?" This was an area that was giving people some concern.

There was also a violation of this family culture through the reorganization itself and the way that it was done. Alan referred to this as a very participative process, in which there were hundreds of people involved in various elements. The feedback that we got that said that was true in terms of the implementations of decisions, that there were implementation task forces, but that people did not feel as much participation in the actual decisions themselves, in terms of the way in which things were done, only in the implementation of them. Alan made some very convincing speeches, he talked a good deal about devolution of authority, about people taking up responsibility and people respond very well to that. But what they tended to report back to us was, "Gee, we really have not seen

that happen yet. Where is this decentralized authority?" And, in fact, they were saying that all decisions were being made by the executive, not being made out there. So what has opened up, is a gap between the vision and the reality as far as employees perceive the reality to be.

What has happened so far? Well some good things, and some things that we still question. It is clear that the structural changes have been largely completed and people feel fairly good that those have been done, although there are some minor questions of who does what. It is rather interesting that the policy formulation process has been revamped, I think very, very extensively, but not all of that is loved by a lot of people. There are people in the external constituencies who used to be able to get into the Board or its Regional Offices, make a case for a policy change and get an instant response to it. The Board used to sway in the wind. Now that there is a more formal policy development and implementation process, some folks out there are saying, "Hey, we don't have as much access out there as we use to have, we can't change it as much". And in fact the phrase "Fortress Bloor" came up in a couple of interviews.

Questions remain about the focus of authority for decisions, which things are central and which are peripheral, and which are made in a decentralized fashion. The budget process has been overhauled, there is clearly a greater sense of financial accountability within the organization. Client services have been reorganized, but unless someone is looking at much more recent data than I am, the jury is out on whether in fact the services are being delivered better. Everything in the theoretical change suggests that it should happen, but to those we interviewed that is not immediately apparent yet.

What is clear and Alan alluded to it, and I think he is absolutely right, is that the structural, process and policy changes have been achieved at tremendous drain and effort on the human resources of the organization. And what the human resources are feeling, is the need right now to move on to the next stage, rebuild a new focus for the Board.

Is anything surprising in this picture? Well, not really. I think that, the famous philosopher Yogi Berra said it very well: "It's like déjà-vu all over again." We are seeing the logical outcome of rapid and massive change, which is that the organizational chart is redrawn, the policies get redone, the systems get redone, but the people tend to become alienated and unhappy because of the amount and rapidity of change.

This was not a consulting project, therefore, I am not allowed to make recommendations nor will I be arrogant enough to make recommendations, but I cannot avoid reaching some conclusions. One of the things that strikes me, about the Workers' Compensation Board, is that notwithstanding the technology, and notwithstanding the policy, this is a human service delivery organization — that, in fact, the ability to achieve the goals as outlined in the mission statement are entirely dependent on the quality of human resources and their commitment to the organization and that this commitment is in jeopardy. It strikes me as a conclusion, that immediate attention to some of the concerns and the fall-out of the change, would be entirely appropriate for the mission of the organization.

Thank you.

RAPID CHANGE IN LARGE ORGANIZATIONS

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PANELISTS' REMARKS

WILLIAM BLUNDELL, CHAIRMAN, CANADIAN GENERAL ELECTRIC

We have had some experience with restructuring at GE Canada, over the last five or six years, we have been downsizing our employment from about 21,000 to just over 10,000 today with more sales and more income, hopefully better positioned to meet the challenges of the global world. So we have been to war and the thought is that we might share some of that experience with the group this morning. First, with respect to the changes which have been described very well this morning, I think our feeling is that they are very much consistent with what we would regard as approaches that have been demonstrated to be successful. More openness, more consultation with the stakeholders, I think the move away from the functional division structures to the four focused divisions is very positive. Certainly the decentralization of service delivery would be very consistent with things that are being done in the private sector. Also I don't have a problem with the speed of change, I think as Alan suggested, there is a trade off between getting at it and the sort of short-term impact or the bruising that takes place on employee morale, but I guess in our experience with the right elements, fast, I would call it brutal change, can be made to work and I think given the circumstances, that Alan was confronted with, I probably would have taken that approach myself. You probably read recently in the newspaper of the problems at Kodak in the U.S. They were written up early this week in the Wall Street Journal. They are now undertaking their fourth restructuring in the last four years, and the chairman is getting a lot of criticism for sort of nibbling at the problem rather than confronting it directly.

As far as a thumbnail assessment of the present situation as we view it, I think the size of internal change has been very well described by Alan and I have to remark that it is a smashing, remarkable amount of change. From an external view point, and I have taken a very thumbnail poll, I am not sure that change has yet registered with the external stakeholders.

What I thought I would do is to spend my few minutes here talking about the challenges ahead and how, given the problem ourselves, we would be approaching it and just wanted to take a fast run at what I have identified as four priorities. We would rank as number one priority, obtaining a buy-in from the employees. And I think as Jeffrey Gandz pointed out, fundamentally the employees must accept the need for change, and they must be convinced of that need. At the best of times it is an extremely difficult task because people are intimidated by change.

Frankly I think that part of the job is much easier in the private sector because we have the reality of the marketplace as the ultimate bench mark. If we are using 100 employees to do a job which a competitor can do with 50, we have two choices; we either have to do it with 50 people or we have to fold. So, reflecting on the challenge confronting the Board, you have to ask yourself what is the reality that has to be addressed and my own view is that the priority still is to go to the global marketplace. The ultimate test is the competitiveness of Canadian industry. That is the priority with the provincial government, and ultimately that is the greater cause to which the Workers' Compensation Board should address itself. The first priority has to be to provide comprehensive support for a healthy, hopefully accident-free workforce in Ontario and at the lowest possible administrative cost. Because Alan was not in a position to state his mission at the offset, this part of the job is going to be more difficult than we would have normally looked for, and will make it difficult to get dialogue underway. But it is our feeling that if you cannot get that employee buy-in and you cannot get everyone to enthusiastically embrace the need for change, they will not be motivated

towards a new culture. If the people really don't care that Ontario has a healthy accident-free and productive workforce then this game is not going to be a very successful one.

The second priority I've entitled "moving towards greater employee empowerment", and again this is a big challenge. If you want to move away from bureaucratic inefficiency and get responsibility and authority down the line to where the action is, you've got to give more responsibility to the employees on the firing line. There are a number of elements to that, and I think it starts on the part of the Board with a very high commitment to training. Training on skills, team building, problem solving, those are the kinds of activities that we would normally use when we go into the process. We try to address with the employees the need for change, and then there is a lot of product and process knowledge that has to be imparted. The only thing I would comment from the private sector side is that we consistently under-resource and underestimate and fail on doing the training part of the job upfront well.

Secondly, moving ahead on employee empowerment, I think you have to start to take away what we would call the unneeded support. Those of you who have been involved in a restructuring are familiar with terms like delayering, increasing spans, essentially taking out supervision and turning more responsibility over to the people themselves. Again, in our experience this is a very difficult job in some cases, and I think Jeffrey certainly has provided a very good conceptual context for this; some people just cannot get their minds around having to be held accountable for their own job. We have situations in our own company where we have had to change up to 40 per cent of the incumbents of supervisory positions because when we started to strip away that support, either they were being carried by their own managers or their ineffectiveness or unwillingness to make a contribution was revealed. Also, on employee empowerment there is a need to delegate, formally, approvals and authority down the line.

Again that's another tough job because if you expand, increase approval levels down the line to one layer and ask that it be flowed down through the organization, what you find a year later is that the next layer still held all of the authority themselves. They either don't have confidence in the people that work for them or they are intimidated or threatened or foresee their own job eroding; so that the formal job of passing authority down the line is a tough exercise in itself. I think when we get to the point where you have employees participating in the actual design of the process, and when you get them identifying for you the constraints that have been imposed by earlier managements, you start then to get the kind of participation that is meaningful. Again our experience in the private sector is that it is incredible the amount of constraint that the employees see on themselves. The number of constraints far exceeds the number of written routines, policies, instructions, or whatever. There are letters that were written ten years ago in some crisis where authorities were temporarily withdrawn. In any event there is an inclination to want to hang on to any kind of constraint that removes some people from the need to take responsibility for themselves. Ultimately, employee empowerment is going with the employee's own judgment. And that takes a lot of training and it takes a lot of confidence in the people. But I think it's when you get there that you have a highly motivated, unbureaucratic workforce. What our experience has been is when we have created those kinds of environments, the people on the first line have been far more diligent in how they have handled company funds, even more so than their managers. We've had, for instance, a great problem with disputes with our customers, where these disputes are over bills which have been unpaid for over six or eight months and have just stayed there unresolved. So we have said to the person on our end of the phone, "up to a thousand dollars, you make the call". And we get things solved faster, and at less cost to the company, which I think is an interesting development.

If the Board really wants to move away from bureaucracy, and towards employee empowerment, frankly I see this as quite a challenge. I think it's a challenge for any organization. There has been a lot of emphasis on training and there, I'd say I see the Board behind the normal curve, if as much, as there hasn't been a lot of training on team building and this type of thing in the early stages of the change process. We have to peel away the unneeded supports. Because all of the players apparently are still inhouse, there has to be a need to thin out the supervisory ranks.

To move towards thinning out the supervisory ranks and of course delegation and employee involvement in process design, will only succeed when the employee commitment is there, and where they see and reach out for more scope and more freedom, but also for more accountability, and feel comfortable with that.

Our own view is that the claims adjudication area would be one area that we would be very attracted to as a place with potential for significant

leverage.

Alan, has I think indicated in his comments that there is a need here for changes in recruitment, training etc., and so we submit that is a logical test area for employee empowerment.

Third priority, and this is moving a little bit more towards a private sector approach, is to attempt to develop a stronger external focus. Today a number of companies in the private sector are wrestling with this, ourselves included, and these programs come in many shapes and sizes but generally under the heading of a customer service. They all have a discipline of X number of steps that you go through to ring the bell.

Generally the first step is to, what they call 'measure the gap'; measure the gap between what the customer expects and what is actually being delivered. It is usually achieved through fairly sophisticated surveys of customers; surveying customers as to what their priorities are, how your company's performance is against that set of priorities, how competitors rate. Frequently employee groups are also surveyed to get at what the internal perception is of performance, the customers' expectations. All I can say is that for most of us it is a very humbling experience.

In our more technologically equipped complex in Peterborough, it's been our practice to get a quotation turned around with a lot of overtime in about 8 to 10 weeks. What we found out from our survey was the customer really wanted it somewhere in between 1 and 2 weeks, and that there were competitors out there that could do it.

And so, we are in a major revamp of that whole activity in order to make ourselves more effective in dealing with these customers.

It is my personal view that the great value in this kind of an activity is that it is really the customer that is setting the standards. It is not management imposing on the people what they think needs to be done, so it just has more credibility. We go as far as, in some of our sessions to actually bring in customers who take all of our people, even our production people, through the impact of something that we foul-up on their operations, and the cost that is to them when we let them down; and of course why we are penalised when we fail to perform.

I think the other thing that comes out of a lot of this work is that the change that is needed is not incremental. That what the expectations out there are, that most of the customers are looking for is macro change. And again I think with your organization that it has a lot of credibility if they hear it from the client base.

As I mentioned earlier we have been confronted with fivefold improvement in some of the activities that we have been undertaking. I guess it is our feeling that a customer service program/client service program is an excellent vehicle for cultural change, because it hopefully develops an awareness within the entire organization of the need to think first of the customer. It also serves as a way of screening out unnecessary work. If a task does not serve a customer need, then you have to ask yourself, why are we doing this in the first place. So that is perhaps a thought for Alan. I think a lot of thought would have to go into just how you go about surveying the client base, (which of course is the employees and the employers). I think it could be done, and I think it would contribute very much to achieving a greater understanding in the minds of the employees.

Finally the fourth priority, and I think this comes out in the discussion presented by Jeffrey Gandz, is that we would submit there is a need for visible measurements of performance. And I think they are needed for several reasons, two of which are:

The Board itself has to feel accountable and demonstrate that accountability to its stakeholders by holding itself accountable to measurement against targets. And it has again been our experience that it is an effective way for the employees to measure the impact of their efforts.

Don't under-estimate that the employees are very much interested in seeing what the impact is in the final output of all of these sacrifices they have been asked to make. For that reason we generally look for measurements which are quite simple, certainly very easily understood. I think to the extent that people can self-measure, that is where the answer does not come from some report that is issued from Head Office, but rather they know just from what's going on day by day how that measurement is going to come out at the end of the month – that, that's a plus.

The results on these performance measures have to be against bold targets. We have had dramatic change and I think everybody, including the employees, is expecting dramatic results. Dramatic improvement in results. I think a lot of momentum can be built from dramatic improvement in the quality of output of the organization.

I am going to be a little bit more arrogant, than Jeffrey was with some suggestions on what might be appropriate targets, recognizing that, I think Bob said, free advice is worth what you paid for it. I am sensitive to that. Here are some thoughts that we scribbled down, taking the four main objectives of the Board.

First: Service excellence. I think that cycle time on claims would pro-

vide a good feel of the pulse and could be quite visibly measured. If it's taking, and I don't know what it is taking, but if it is taking 8 to 12 weeks maybe you should shoot for 3 days or a week, but something that represents real efficiency, and I think can be done.

My guess is that if you went to the employees with that kind of a challenge you would be overrun with the ideas that would flow back and their willingness to take on that kind of a macro improvement.

On financial soundness, (that is just too much to pass by, coming in here from the employers' side of the house), obviously the tracking plan on the reduction of the unfunded liability certainly has to get your attention. The plan has to show reduction of that unfunded liability in year one to have any credibility at all. If the promise is that in year two or three the thing is going to turn down, it is going to be totally Ho-Hum, you know a "yawn".

So I would make that very much an element. Obviously the assessment rates would have to be maintained at appropriate levels. And then I would take as a secondary measurement, something on the cost of administration as a per cent of total claims paid. But some measurement on cost of administration against volume of output, and I think a neat target would be to cut that in half over the next 5 years. I am not kidding! I think that would be just a nifty way to tell your stakeholders how you would plan to go about improving the effectiveness of the Board's activities.

Thirdly: On public understanding, I would just say again the proof of the pudding is in the eating. I think if you have impressive performance against pre-established targets that's the best news, the best way you can communicate to your stakeholders that the job is being well done.

Finally: Responsible administration. I think we should be looking for some kind of a productivity measurement. It would be secondary to, or support the one on the administration as a percentage of claims paid. The only thing I would comment on here is that in the private sector we are really stretching for 6% real productivity improvement every year. That means if your volume is up 6% you do it with the same number of people. If the volume is flat then you do it with 6% fewer. And then on the assumption that inflation can be held under 6%, the current dollars spent on administration would be going down, and again, I think that would get the attention of the stakeholders.

So, those are the four priorities as we would see them from an external view.

Just reviewing again very briefly, the importance of buy-in on the part of the employees, the need I think, in time to go for employee empowerment: the need to establish bold targets and then hold oneself accountable for the performance against those targets. I would conclude by saying that this is a tall order, but do-able.

I think I would come down finally on employee buy-in as being the key. That will determine whether or not our view of this will be a successful exercise, whether the employees will see the greater purpose and be prepared to take ownership of that challenge.

I think all of us who are stakeholders on the Board, and I am including myself particularly, are anxious to share experiences and help where we can. We certainly wish Alan and his team all the very best of success in what we think is a very exciting initiative, undertaken by a group of people that have lots of guts. Thanks very much.

MONIQUE JÉRÔME-FORGET,
PRESIDENT AND
CHIEF EXECUTIVE OFFICER,
COMMISSION DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL DU QUÉBEC

Merci monsieur le président, I would like to thank both Dr. Robert Elgie and Alan Wolfson for inviting me to speak to this prestigious platform and to be invited to share with you this very special occasion, the 75th anniversary of the Workers' Compensation Board of Ontario.

Being a close neighbour, I know a bit about Ontario because we periodically share information.

I was very flattered to be called a sister province next door because we have had numerous occasions to meet and share problems. We rarely emphasized our successes. I will agree, with Jeffrey Gandz when he quoted, I think, Toffler, that "organizations live long periods of change and rarely, infrequently, periods of stability". This has been the story of the organization that I preside over. To tell you the truth I do not expect that it is going to change. I think that those are organizations that are faced with divergent interests creating dilemmas.

Divergent Interests We have people wanting extensive and rapid services within 3 days, as mentioned by Bill, at the same time we have employers who express concerns over the cost, emphasizing the need to reduce the rates, and also propose to cut the deficit or refund the liability fund. Workers' compensation boards are in the middle, managing these two opposite concerns.

Having two client groups, the first of course being the injured worker needing a swift response and employers who pay the bill of workers' compensation.

In the Province of Quebec people

are generally stunned to hear that the commission collects more money from employers than the provincial government does. That may explain the apparent dissatisfaction from employers. In Ontario it's over 2 billion dollars and in Quebec it's 1.7 billion dollars. The sums of money involved are important. It's one of the most important contributions made by employers. So you have this dichotomy, as pointed out, between two client groups, who have different expectations.

It was mentioned that a successful technique measuring the gap between expectations and what could be delivered generated surprise when it was found that something that could only be delivered in three weeks, was in fact expected in less than a week. We experienced the same problem with our client groups. They want to be paid immediately and correctly, and should so, yet we have to make sure that we pay for injuries that occurred in the workplace for which employers must take financial responsibility. It is a problem that I am sure Alan has to face.

We have gone through numerous changes over the years in the Province of Quebec.

That first big change occurred in 1979, when workers' compensation and occupational health and safety were integrated. The rationale behind this move was to decrease accidents, by increasing prevention and the Occupational Health and Safety Commission was born having its double mandate.

We had to recuperate inspectors from various departments, integrate them into the culture of workers' compensation. Similarly Board members had now to focus on prevention. That was the first and most important change in the organization.

Furthermore, in 1981, we shifted our orientation from a centralized board to a decentralized organization and between 1981 and 1983 fifteen new regions were created with the objective of being closer to our client groups, responding to the environment in which people lived. While decentralization achieved this closeness with client groups, decentralization had other problems. The regional director was accountable for the region to be supervised. Yet, some unexpected results occurred as well, with the appearance of fifteen different boards, sometimes taking fifteen different orientations, with the best of intentions always. We recently had to remind people of the one board applying one type of *Act*. Policies had to be centralized because workers and employers had different interpretations from one region to the other.

Decentralization can be very good if the objectives and processes are clear with adequate guidelines. Workers' compensation being constantly at the forefront of the political agenda it makes it evermore problematic. Yet, decentralization is possible but policies need to be well written, clearly defined and the scope of decision limited.

Further changes followed this reorganization. In 1985, the government came up with a new *Act* having as its objective a wage-loss system. I understand that a wage-loss system was recently enacted in Ontario, to take effect early in 1990. Adjudicators, 500 of them, had to relearn a new way of operating totally different from the former.

This is one of the many drawbacks of change. Similarly implementing the rehabilitation process now in our statutes was also very demanding and equally difficult to implement. These were some of the problems that we experienced, in Quebec, with new legislation.

Employers have to face organizational changes like those described earlier but our appeal tribunals equally force us to shift in direction and reorient our interpretation of the law.

One of the challenges that our employees have had to deal with was precisely to cope with new interpretations of what is work injury. It used to be that an accident needed to occur on the work site to be considered a work-related injury. Most people had that understanding and agreed with this interpretation.

Today, if you suffer an injury on the work site, appeal tribunals across Canada tend to claim that it is a work related injury. Trends are shifting and a total quality environment becomes a minimum.

Stress is increasingly being regarded as compensable, I could report on cases in the United States where workers' compensation boards administered privately regard stress as indemnifiable. Nervous breakdown, cardiovascular problems are also on the agenda.

We, therefore, need to adjust to such an environment, boards have to adjust to this new reality and this adjustment must reach our adjudicators. They have to adapt quickly and correctly. The problem is the speed with which the situation is changing. We oft-times need to send a new guideline – that what used not to be indemnifiable which now is. We hope that with computer expert systems we will be able to resolve the problem, so that, it will be automatically adjusted. It is the person at the grass roots who is most vulnerable to all these changes. When I meet staff across the regional offices the point that is repeatedly made is the need to consolidate. The need to pause is the one single and the most frequent request that I get from the staff.

There is a constant feeling of incompetence, as was well stated this morning by Jeffrey. Because if they fail to learn these new interpretations quickly enough, they have a sense of failure. This is most demoralizing, and difficult for an organization.

I would like, en passant, to comment on who recommended a cut of administrative cost by as much as 50%. The administrative cost of private insurance companies is 20% of global costs and it can be as high as 25%. Across Canada boards generally spend 10% from their budget on administration.

What is the potential danger of reducing administration for boards? The trade-off is to accept all requests immediately, and for everybody speedy service is a good indication of service. If that was a choice I can assure you that the cost would escalate and rates would equally escalate because the insurance industry requires systematic follow-ups. The objective is to return injured workers back to work, which is their basic right and is also beneficial for the system socially and financially.

Medical attention and follow-ups must be given rapidly and efficiently because that's where the costs are. Out of two billion dollars for the Ontario board the administration cost is somewhere around 10 per cent.

I am not suggesting that we should not improve our management skills, do not misunderstand me, I think we should improve services and, for instance, answer telephone calls rapidly. We should also treat clients warmly and correctly. I believe very strongly that we should pay attention to people. I believe in all of that, and I think we have lots to improve upon.

The point I am trying to make is that, if you want to make sure that you reduce workers' compensation costs, one has to follow cases systematically. We share the responsibility among all of us, the worker, the employer and the Board. Because when the worker is not attended to by appropriate medical treatment, income replacement during this period is costly, one more day of absenteeism in Quebec is 12 million dollars a day. Cutting the waiting period for physiotherapy, which we did from 12 days to five days, is an administrative decision, which is in the interest of the client, the interest of the Board and the interest of the employer.

It is also imperative to persuade employers it is better that their injured workers should be back in the firm. We have also to assist employers in how to reintegrate employees. The majority of employers in this province are not as equipped as General Electric. Some employers need assistance and we feel that it is the Board's responsibility to assist them in reintegrating employees. Because for workers off work, salaries need to be paid. So the trade off is that we want to return employees, not at any cost, not if it goes against their health, but we think it is good economics to make sure that we return the injured to work as soon as possible.

Well that takes additional resources. I don't know about the management of Ontario in terms of resources but I suspect that with this new legislation more people will be needed because of what I have just pointed out. Another aspect of the Board's management is that it is a very public organization, scrutinized by all. It makes it somewhat difficult to manage because, periodically, magical solutions are proposed.

Also we did a major revamping. We modified our administrative structure which led to a change of all the vice-presidents. We also increased the number of regional offices, bringing them from 15 to 21. We assessed each job, employees filled in the commission and assessed the relevancy of their tasks.

Just to summarize, a humble observation on my part. I would agree with Bill that we generally spend far too little on training and retraining. As Jeffrey has pointed out, when we ask them to do something new, we rarely tell them to stop doing something else. Also I think we should pay a lot more attention to keeping our organization as unbureaucratic as possible, as efficient as possible, as human as possible, because we are in the business of dealing with human beings.

Thank you.

CLOSING REMARKS

by the Honourable Robert Stanbury, Symposium Chairman

Thursday, September 21, 1989
Metro Convention Centre
Toronto, Ontario

Ladies and gentlemen: As this Symposium began, many of us were aware of the many changes and developments affecting workers' compensation in Ontario, particularly over the past several years.

However, listening to the many fine presentations by our distinguished speakers and excellent discussions by our panelists, I am sure the scope of these achievements has had a greater, dynamic impact on all of us. We have been fortunate to have the privilege of listening to these participants who are among the most accomplished experts in workers' compensation in North America. On behalf of everyone attending this Symposium, I would like to thank them for their participation and provocative insights.

Indeed, the Workers' Compensation Board of Ontario can be proud of its efforts not only during the 1980s, but the past 75 years as well. Clearly, it remains one of Ontario's most vital and important institutions, affecting the lives of virtually all Ontario residents.

As the WCB enters the 1990s, it faces a new era with greater challenges. This Symposium has clearly indicated that if the Board is to successfully meet these demands, there will be a need for even more participation among all clients and stakeholders: the worker and employer communities, health care professionals, legislators, the WCB Board of Directors and its staff.

To successfully maintain a fair and equitable system, all these people must work together in the atmosphere of openness and accessibility exemplified by this Symposium.

As we leave this Symposium, we should leave invigorated, remembering that we have an important responsibility. It is up to all of us here today to ensure that the serious problems of work-related injuries and disease afflicting hundreds of thousands of Ontario citizens every year are resolved, as Sir William Meredith advised us so many years ago, fairly, urgently and compassionately.

From what we have heard, I am sure the 1990s will continue to be eventful with many more progressive changes to meet new challenges ahead.

On behalf of the Workers' Compensation Board of Ontario, I would like to thank you for attending our Symposium to commemorate the 75th anniversary of the workers' compensation system in Ontario.

Good afternoon.